



IOWA ADMINISTRATIVE BULLETIN

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CONTENTS IN THIS ISSUE

Pages 1425 to 1502 include **ARC 4130B** to **ARC 4172B**

ALL AGENCIES

Schedule for rule making	1416
Publication procedures	1417
Administrative rules on CD-ROM	1417
Agency identification numbers	1422

CITATION OF ADMINISTRATIVE RULES 1421

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Filed, Registered dental assistant—provision of intraoral suctioning, 1.1, 20.4(2) ARC 4166B ..	1494
Filed, Mandatory reporting, 10.6(4), 30.4, 31.13, 31.14 ARC 4165B	1494
Filed, Temporary permit—provision of volunteer services, 13.3, 15.1(16), 15.1(17) ARC 4167B	1495

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Notice, Renewal of initial license, 17.8(1) ARC 4147B	1425
---	------

EDUCATION DEPARTMENT[281]

Filed, Agency procedure for rule making, 2.7(1), 2.18 ARC 4143B	1495
Filed, Local option sales and services tax for school infrastructure, 96.1, 96.4 to 96.7 ARC 4142B	1496

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Notice, Biodiesel and diesel fuel, number 1 and number 2 fuel oils, 20.2 ARC 4159B	1425
Notice, Construction permits—exempt equipment and processes, 22.1(2) ARC 4160B	1427
Notice, Ordinary travel clarified, 23.3(2)"c"(1) ARC 4158B	1429
Notice, Owners and operators of underground storage tanks—technical standards and corrective action, 135.1 to 135.5, 135.14 to 135.17 ARC 4164B	1430

Filed, Animal feeding operations—construction
permits and their duration, 65.1, 65.7(1)"b,"
65.7(5), 65.9(1)"p," 65.10(3)"b," 65.15(7)"c"

ARC 4161B

Filed, Records to demonstrate compliance with
manure management plan, 65.17(13)"e"

ARC 4162B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice, Request for advisory opinion, 1.2(1)

ARC 4170B

Notice, Committee address and telephone number,
4.4(2) **ARC 4171B**

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

Notice of public funds availability

HUMAN SERVICES DEPARTMENT[441]

Notice, Resolution of legal settlement disputes,
ch 15; 29.4, 30.1(1), 30.3 **ARC 4169B**

Notice, Medicaid eligibility, 75.7, 75.10 to
75.14, 75.16 to 75.18, 75.21, 75.25, 75.27

ARC 4168B

Notice, Medicaid preferred drug list, 78.1(2),
78.28(1), 79.1(8) **ARC 4134B**

Notice and Notice Terminated, Family-centered
services; rehabilitative treatment services,
amend chs 150, 152, 185; adopt ch 182

ARC 4133B

Filed, Food assistance eligibility—increase in
two deductions, 65.8(1)"a" and "b," 65.8(3)

ARC 4139B

Filed Emergency, Medicaid preferred drug list,
78.1(2), 78.28(1), 79.1(8) **ARC 4138B**

Filed Emergency, Family-centered services;
rehabilitative treatment services, amend

chs 150, 152, 185; adopt ch 182 **ARC 4135B** ...

Filed Emergency After Notice, Dependent adult
abuse—reporting requirements, 176.1, 176.4,
176.16(3) **ARC 4137B**

Filed Emergency After Notice, Subsidized
adoptions, 201.3(2)"b," 201.5(2) **ARC 4136B** ..

Continued on page 1415

PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice, Amusement devices, 104.1, 104.2,
104.6, 105.1 to 105.3, 105.5 to 105.7, 105.9,
105.10 **ARC 4144B** 1446

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Filed, Licensing of insurance producers, 10.4(6),
10.7 **ARC 4152B** 1499

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Notice, Physician licensure, amendments to
chs 9, 10 **ARC 4132B** 1450

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Notice, Game management areas, 51.3
ARC 4163B 1453

PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Notice, Fees, amendments to chs 2, 3, 8,
10, 12, 17 **ARC 4153B** 1454

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Notice, Optometrists, 180.1, 180.3(3), 180.5 to
180.7, 180.10 to 180.12, 181.2 to 181.11,
184.1 **ARC 4141B** 1455

Notice, Optometrists—licensure and discipline,
180.2(1), 180.3(3), 181.3, 183.2(30)
ARC 4140B 1459

Notice, Podiatrists, 220.1, 220.7(1), 220.9 to
220.11, 220.14 to 220.16, 222.1 to 222.7,
222.9, 222.10, 225.1 **ARC 4145B** 1459

Notice, Podiatrists—licensure and discipline,
220.2, 220.3, 220.6, 220.7, 222.3(2),
224.2(31) **ARC 4146B** 1462

Notice, Physician assistants, 326.1, 326.4(5),
326.9 to 326.11, 326.14, 326.19, 326.20,
328.1 to 328.10, 330.1 **ARC 4149B** 1463

Notice, Physician assistants—discipline,
329.2(31) **ARC 4148B** 1466

PUBLIC FUNDS—AVAILABILITY

Homeland Security and Emergency
Management Division[605]
Flood mitigation assistance (FMA) program 1424

PUBLIC HEARINGS

Summarized list 1418

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Filed, Occupational and vendor licensing; harness
racing; thoroughbred racing, 6.16(5), 6.17(1),
6.19(1), 6.20(1), 6.23(1), 6.25, 9.4(1), 10.4(5)
ARC 4154B 1499

**REAL ESTATE APPRAISER EXAMINING
BOARD[193F]**

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Filed, Appraiser qualifications, amend
chs 3 to 6, 11, 12; adopt chs 9, 13 to 15
ARC 4155B 1500

REVENUE DEPARTMENT[701]

Notice, Determination of value of railroad
companies, 76.1, 76.4, 76.5, 76.7, 76.9
ARC 4172B 1467

TRANSPORTATION DEPARTMENT[761]

Notice, Fleet additions and temporary authority,
500.9 **ARC 4151B** 1469

Notice, School bus endorsement; hazardous
material endorsement, amendments to
chs 605, 607 **ARC 4130B** 1469

Filed, Motor carrier regulations, 529.1
ARC 4131B 1500

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Notice, Telecommunications providers,
amendments to ch 22 **ARC 4157B** 1472

Filed, Lifeline and link-up rules, 39.3(4), 39.3(5)
ARC 4156B 1501

**VOLUNTEER SERVICE, IOWA
COMMISSION ON[555]**

Notice, Retired and senior volunteer
program (RSVP), ch 7 **ARC 4150B** 1478

Schedule for Rule Making 2005

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 31 '04	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05
Jan. 14 '05	Feb. 2	Feb. 22	Mar. 9	Mar. 11	Mar. 30	May 4	Aug. 1
Jan. 28	Feb. 16	Mar. 8	Mar. 23	Mar. 25	Apr. 13	May 18	Aug. 15
Feb. 11	Mar. 2	Mar. 22	Apr. 6	Apr. 8	Apr. 27	June 1	Aug. 29
Feb. 25	Mar. 16	Apr. 5	Apr. 20	Apr. 22	May 11	June 15	Sept. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 6	May 25	June 29	Sept. 26
Mar. 25	Apr. 13	May 3	May 18	***May 18***	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 3	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	June 17	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	***June 29***	July 20	Aug. 24	Nov. 21
May 18	June 8	June 28	July 13	July 15	Aug. 3	Sept. 7	Dec. 5
June 3	June 22	July 12	July 27	July 29	Aug. 17	Sept. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 12	Aug. 31	Oct. 5	Jan. 2 '06
June 29	July 20	Aug. 9	Aug. 24	***Aug. 24***	Sept. 14	Oct. 19	Jan. 16 '06
July 15	Aug. 3	Aug. 23	Sept. 7	Sept. 9	Sept. 28	Nov. 2	Jan. 30 '06
July 29	Aug. 17	Sept. 6	Sept. 21	Sept. 23	Oct. 12	Nov. 16	Feb. 13 '06
Aug. 12	Aug. 31	Sept. 20	Oct. 5	Oct. 7	Oct. 26	Nov. 30	Feb. 27 '06
Aug. 24	Sept. 14	Oct. 4	Oct. 19	Oct. 21	Nov. 9	Dec. 14	Mar. 13 '06
Sept. 9	Sept. 28	Oct. 18	Nov. 2	Nov. 4	Nov. 23	Dec. 28	Mar. 27 '06
Sept. 23	Oct. 12	Nov. 1	Nov. 16	***Nov. 16***	Dec. 7	Jan. 11 '06	Apr. 10 '06
Oct. 7	Oct. 26	Nov. 15	Nov. 30	Dec. 2	Dec. 21	Jan. 25 '06	Apr. 24 '06
Oct. 21	Nov. 9	Nov. 29	Dec. 14	***Dec. 14***	Jan. 4 '06	Feb. 8 '06	May 8 '06
Nov. 4	Nov. 23	Dec. 13	Dec. 28	Dec. 30	Jan. 18 '06	Feb. 22 '06	May 22 '06
Nov. 16	Dec. 7	Dec. 27	Jan. 11 '06	Jan. 13 '06	Feb. 1 '06	Mar. 8 '06	June 5 '06
Dec. 2	Dec. 21	Jan. 10 '06	Jan. 25 '06	Jan. 27 '06	Feb. 15 '06	Mar. 22 '06	June 19 '06
Dec. 14	Jan. 4 '06	Jan. 24 '06	Feb. 8 '06	Feb. 10 '06	Mar. 1 '06	Apr. 5 '06	July 3 '06
Dec. 30	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
25	Wednesday, May 18, 2005	June 8, 2005
26	Friday, June 3, 2005	June 22, 2005
1	Friday, June 17, 2005	July 6, 2005

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. West, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ADMINISTRATIVE SERVICES DEPARTMENT[11]		
Disposal of state surplus property, 111.1, 111.2 IAB 4/27/05 ARC 4124B	Conference Room 04, Level A-South Hoover State Office Bldg. Des Moines, Iowa	May 17, 2005 11 a.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Family and consumer sciences endorsement, 14.141(10), 16.1(1) IAB 4/27/05 ARC 4126B	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 17, 2005 1 p.m.
Special education endorsements— rescission of requirements no longer applicable, 15.2 IAB 4/27/05 ARC 4127B	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 17, 2005 1:30 p.m.
Renewal of initial license, 17.8(1) IAB 5/11/05 ARC 4147B	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 31, 2005 1 p.m.
EDUCATION DEPARTMENT[281]		
Unsafe school choice option, 11.3(1) IAB 4/13/05 ARC 4098B	Conference Room 2 Southwest Grimes State Office Bldg. Des Moines, Iowa	May 11, 2005 2 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Biodiesel and diesel fuels, number 1 and number 2 fuel oils, 20.2 IAB 5/11/05 ARC 4159B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	June 14, 2005 1 p.m.
Controlling pollution, 22.1(2) IAB 5/11/05 ARC 4160B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	June 13, 2005 1 p.m.
	Gritter Room, Iowa Hall Kirkwood Community College Cedar Rapids, Iowa	June 16, 2005 1 p.m.
Road maintenance activity considered ordinary travel, 23.3(2) IAB 5/11/05 ARC 4158B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	June 15, 2005 1 p.m.
Technical standards and corrective action requirements for owners and operators of underground storage tanks, amendments to ch 135 IAB 5/11/05 ARC 4164B	Public Library 1401 Fifth St. Coralville, Iowa	May 31, 2005 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

Norelius Community Library 1403 First Ave. S. Denison, Iowa	June 1, 2005 1 p.m.
Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 2, 2005 1 p.m.

HUMAN SERVICES DEPARTMENT[441]

Resolution of legal settlement disputes, ch 15; 29.4, 30.1(1), 30.3 IAB 5/11/05 ARC 4169B	First Floor Southeast Conference Rm. 1 Hoover State Office Bldg. Des Moines, Iowa	June 1, 2005 1 to 3 p.m.
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INSPECTIONS AND APPEALS DEPARTMENT[481]

Amusement devices, 104.1, 104.2, 104.6, 105.1 to 105.3, 105.5 to 105.7, 105.9, 105.10 IAB 5/11/05 ARC 4144B	Conference Room 320 Lucas State Office Bldg. Des Moines, Iowa	June 1, 2005 10 a.m.
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LABOR SERVICES DIVISION[875]

Elevators—installation inspection and permit fees, 75.1, 75.3, 75.4, 75.7 IAB 4/27/05 ARC 4121B	Capitol View Conference Room 1000 E. Grand Ave. Des Moines, Iowa	May 19, 2005 1:30 p.m. (If requested)
Elevators—alterations, 76.7 IAB 4/27/05 ARC 4122B	Capitol View Conference Room 1000 E. Grand Ave. Des Moines, Iowa	May 19, 2005 1:30 p.m. (If requested)

MEDICAL EXAMINERS BOARD[653]

Licensure procedures, 9.1, 9.2, 9.5, 9.11 to 9.13, 9.15, 10.3 to 10.5 IAB 5/11/05 ARC 4132B	Suite C 400 SW Eighth St. Des Moines, Iowa	May 31, 2005 10 a.m.
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NATURAL RESOURCE COMMISSION[571]

Game management areas, 51.3 IAB 5/11/05 ARC 4163B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 1, 2005 10 a.m.
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NURSING BOARD[655]

Licensure, 3.1, 3.4, 3.5, 3.7, 4.6, 4.11 IAB 4/13/05 ARC 4106B	Des Moines West Room Holiday Inn Downtown 1050 Sixth Ave. Des Moines, Iowa	June 1, 2005 6:30 p.m.
License renewal fee, 3.1 IAB 4/13/05 ARC 4105B	Des Moines West Room Holiday Inn Downtown 1050 Sixth Ave. Des Moines, Iowa	June 1, 2005 6:30 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Massage therapists, amendments to chs 131, 133, 135 IAB 4/27/05 ARC 4120B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 17, 2005 10 to 11 a.m.
Massage therapists—licensure and discipline, 131.2, 131.4, 131.5, 133.2, 133.3, 134.2(31) IAB 4/27/05 ARC 4119B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 17, 2005 10 to 11 a.m.
Nursing home administrators, amendments to chs 141, 143, 145 IAB 4/27/05 ARC 4118B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 17, 2005 9 to 10 a.m.
Nursing home administrators— licensure and discipline, 141.2, 141.4, 141.5, 144.2(33) IAB 4/27/05 ARC 4117B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 17, 2005 9 to 10 a.m.
Optometrists, amendments to chs 180, 181, 184 IAB 5/11/05 ARC 4141B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 2, 2005 10 to 11 a.m.
Optometrists—licensure and discipline, 180.2, 180.3, 181.3, 183.2(30) IAB 5/11/05 ARC 4140B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 2, 2005 10 to 11 a.m.
Podiatrists, amendments to chs 220, 222, 225 IAB 5/11/05 ARC 4145B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 2, 2005 9 to 10 a.m.
Podiatrists—licensure and discipline, 220.2, 220.3, 220.6, 220.7, 222.3, 224.2(31) IAB 5/11/05 ARC 4146B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 2, 2005 9 to 10 a.m.
Physician assistants, amendments to chs 326, 328, 330 IAB 5/11/05 ARC 4149B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 2, 2005 1 to 2 p.m.
Physician assistants—discipline, 329.2(31) IAB 5/11/05 ARC 4148B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 2, 2005 1 to 2 p.m.

PUBLIC SAFETY DEPARTMENT[661]

Fire safety requirements for hospitals and health care facilities, rescind 5.900 to 5.925; adopt ch 205 IAB 4/27/05 ARC 4125B	Fire Marshal Division Conference Rm. Suite N 401 SW Seventh St. Des Moines, Iowa	May 19, 2005 10 a.m.
Support and anchoring systems for manufactured homes, 16.626, 16.627, 16.629 IAB 4/13/05 ARC 4115B (See also ARC 4116B)	Fire Marshal Division Conference Rm. Suite N 401 SW Seventh St. Des Moines, Iowa	May 17, 2005 10 a.m.

TRANSPORTATION DEPARTMENT[761]

Fleet additions and temporary authority, 500.9 IAB 5/11/05 ARC 4151B	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	June 2, 2005 10 a.m. (If requested)
School bus and hazardous material endorsements; commercial driver licensing, 605.4(1), 605.10, 605.16, amendments to ch 607 IAB 5/11/05 ARC 4130B	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	June 2, 2005 10 a.m. (If requested)

UTILITIES DIVISION[199]

Telecommunications providers, amendments to ch 22 IAB 5/11/05 ARC 4157B	Hearing Room 350 Maple St. Des Moines, Iowa	June 24, 2005 9 a.m.
Quality of service reporting by eligible telecommunications carriers, 39.3(1), 39.5 IAB 3/16/05 ARC 4064B	Hearing Room 350 Maple St. Des Moines, Iowa	May 11, 2005 9 a.m.

VOLUNTEER SERVICE, IOWA COMMISSION ON[555]

Retired and senior volunteer program (RSVP), ch 7 IAB 5/11/05 ARC 4150B	Main Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	June 1, 2005 8:30 a.m.
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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
 Grow Iowa Values Board[264]
 Iowa Finance Authority[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
 EMPOWERMENT BOARD, IOWA[349]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HUMAN INVESTMENT COUNCIL[417]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]
 Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]
INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
VOLUNTEER SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Homeland Security and Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	TYPES OF PROJECTS	APPLICATION DUE DATE
Iowa Homeland Security and Emergency Management Division (HLSEM)	Flood Mitigation Assistance (FMA) FY2005 FMA Program authorized by the National Flood Insurance Reform Act of 1994, Title V, Sections 553 and 554, Public Law 103-325 U.S.C. 515a., to reduce the number of repetitive loss claims against the NFIP.	Statewide for NFIP participants	<p>Mitigation Plan Requirement: To be eligible for Project grants, an eligible subapplicant must develop, and have approved by the FEMA Regional Director, a Flood Mitigation Plan in accordance with 44 CFR 78.5</p> <ul style="list-style-type: none"> State-level agencies; Local communities; Private individuals and private nonprofit (PNP) organizations are NOT eligible; however, a relevant state agency or local community may apply to the applicant for assistance to mitigate private or PNP structures. Federally recognized Indian tribal governments; to include state-recognized Indian tribes; authorized Indian tribal organizations, and Alaska Native villages) NFIP Participation: Communities must not be on probation, suspended or withdrawn from the NFIP. Property owners must have a current flood insurance policy and flood insurance shall be maintained in perpetuity on an improved property. 	<ul style="list-style-type: none"> FMA is to assist state and local governments in funding cost-effective actions that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other insurable structures. Planning Grant to Communities to assess the flood risks and identify actions to reduce that risk. <p>Eligible projects include, but are not limited to:</p> <ul style="list-style-type: none"> Acquisition of insured structures and underlying real property in fee simple and easements restricting real property to open space uses. Relocation of insured structures from acquired or restricted real property to non-hazard-prone sites. Demolition and removal of insured structures on acquired or restricted real property. 	May 23, 2005

FMA“05” applications will be submitted utilizing the Electronic Grants Management System (e-Grants) through the Internet at <https://portal.fema.gov>. Guidance may be obtained on our website www.iowahomelandsecurity.org or by contacting:

Dennis Harper, State Hazard Mitigation Officer, Linda Roose, or John Wageman

Iowa Homeland Security and Emergency Management Division
Des Moines, Iowa 50319-0113
(515)281-3231

ARC 4147B**EDUCATIONAL EXAMINERS
BOARD[282]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 17, “Renewal of Licenses,” Iowa Administrative Code.

The proposed amendment recommends changes that will act as a bridge to a standard license when the initial license expires.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, May 31, 2005, at 1 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, June 3, 2005. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend subrule 17.8(1) as follows:

17.8(1) If a person meets all requirements for the standard license except for the options required in 282—paragraph 14.112“2,” the initial license may be renewed upon written request. A second renewal may be granted if the holder of the initial license has not met the options required in 282—paragraph 14.112“2” and if the license holder can provide evidence of teaching employment which will be acceptable for the experience requirement.

A Class A license may be issued instead of renewing the initial license to another initial license if the applicant verifies one of the following:

a. The applicant is involved in the second year of the mentoring and induction program, but the license will expire before the second year of teaching is completed.

b. The applicant has taught for two years in a nonpublic school setting and needs one additional year of teaching to convert the initial license to the standard license.

The fee for this Class A license is \$25.

ARC 4159B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 20, “Scope of Title—Definitions—Forms—Rules of Practice,” Iowa Administrative Code.

This proposed amendment to rule 567—20.2(455B) adds new definitions for “biodiesel fuel,” “diesel fuel,” and “number 1 fuel oil” and “number 2 fuel oil.”

Biodiesel fuel is a renewable, biodegradable liquid fuel derived from agricultural plant oils or animal fat. The most common type of biodiesel fuel used in Iowa is made from soybean oil. Number 1 and number 2 fuel oils are two distillate oils that are commonly used in internal combustion engines, and are sometimes used in boilers and combustion turbines. Diesel fuel is a low sulfur fuel oil that is also frequently used in internal combustion engines. Fuel blends of up to 2.0 percent biodiesel, by volume, are widely available and appear to be readily usable in most internal combustion engines.

Based on the available data, blends of diesel fuel, number 1 or number 2 fuel oil, with up to 2.0 percent biodiesel fuel, by volume, are not expected to result in measurable increases in air pollution. The Department will therefore define biodiesel blends at these specifications to be equivalent to unblended diesel fuel, number 1 fuel oil and number 2 fuel oil. Additionally, the Department will consider construction or operating permits with restrictions for diesel fuel, number 1 fuel oil or number 2 fuel oil to include this biodiesel/fuel oil blend.

This modification will provide a benefit to facilities that currently combust diesel fuel, number 1 fuel oil or number 2 fuel oil and wish to consider using biodiesel/fuel oil blends because the facilities will no longer be required to apply for modifications of construction permits to make this fuel change.

If facilities wish to burn biodiesel/diesel or biodiesel/fuel oil blends of greater than 2.0 percent biodiesel, by volume, emissions calculations and permits will need to be modified accordingly.

The Iowa Association of Municipal Utilities (IAMU) approached the Department with information that some munic-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ipal utilities were interested in burning biodiesel in their internal combustion engines. Because emissions information for burning biodiesel in large, stationary engines was limited, the Department worked with IAMU and other interested parties during IAMU's air emissions testing of biodiesel/diesel blends in two diesel generators at a municipal utility.

The testing was conducted at Sumner Municipal Light. The two air pollutants of concern were particulate matter (PM) and nitrogen oxide (NO_x). The testing results showed that particulate emissions decreased with a 10 percent biodiesel blend in both engines tested. NO_x emissions decreased with a 10 percent biodiesel blend in the newer engine tested, but increased in the older engine tested.

Using a 10 percent biodiesel blend at Sumner resulted in about a 10 percent increase in NO_x emissions from the older engine. The newer engine showed a 13 percent NO_x decrease. There is not sufficient information, however, to determine if engine age, or some other unknown factor, accounted for the disparity in NO_x emissions.

It is known that new engines use electronically controlled fuel injection and intake air control, allowing for optimum fuel timing and air induction at all times, thereby reducing combustion temperatures, and thus NO_x production. While older engines use mechanical injection and fixed air induction, improved results should be achieved with older engines by adjusting the mechanical timing and optimizing fixed air induction.

Although this technology could allow for some newer engines or retrofitted older engines to achieve reduced NO_x production, there is not enough emissions data currently available to allow the Department to designate which engine years and models would qualify as "new" engines, or which engine years and models would be considered to be "old" engines.

Based on the limited testing data at Sumner, along with data from an EPA analysis of biodiesel emissions from mobile, heavy-duty engines, it appears that NO_x emissions increases are roughly linear to biodiesel concentration. That is, burning a 5 percent biodiesel blend in an internal combustion engine could produce roughly a 5 percent increase in NO_x emissions. EPA's analysis of mobile engines did not find any correlation between engine model year and the emissions impacts from biodiesel.

Based on the information currently available, the Department cannot consider the NO_x emissions from combustion of biodiesel blends greater than 2.0 percent biodiesel, by volume, to be equivalent to burning unblended diesel fuel, number 1 fuel oil or number 2 fuel oil.

The Department will continue to work closely to assist facilities in calculating their emissions and expeditiously obtaining any needed permit amendments.

Any person may make written suggestions or comments on the proposed amendment on or before June 20, 2005. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094; or by electronic mail to christine.paulson@dnr.state.ia.us.

An informational meeting for those with questions about the amendment will be held on Tuesday, June 7, 2005, at 1 p.m. at the conference rooms at the Department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa.

A public hearing will be held on Tuesday, June 14, 2005, at 1 p.m. in the conference rooms at the Department's Air Quality Bureau office located at 7900 Hickman Road, Ur-

bandale, Iowa. All comments must be received no later than June 20, 2005.

Any person who intends to attend the informational meeting or public hearing and has special requirements such as those related to hearing or mobility impairments should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

This amendment is intended to implement Iowa Code section 455B.133.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule **567—20.2(455B)** by adopting the following **new** definitions in alphabetical order:

"Biodiesel fuel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fat such as, but not limited to, soybean oil. For purposes of this definition, "biodiesel fuel" must also meet the specifications of American Society for Testing and Material Specifications (ASTM) D6751-02, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," and be registered with the U.S. Environmental Protection Agency as a fuel and a fuel additive under Section 211(b) of the Act.

"Diesel fuel" means a low sulfur fuel oil that complies with the specifications for grade 1-D or 2-D, as defined by the American Society of Testing and Materials (ASTM) D975-02, "Standard Specification for Diesel Fuel Oils," grade 1-GT or 2-GT, as defined by ASTM D2880-00, "Standard Specification for Gas Turbine Fuel Oils," or grade 1 or 2, as defined by ASTM D396-02, "Standard Specification for Fuel Oils."

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, diesel fuel may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as "biodiesel fuel" is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in numbered paragraph "1" to be equivalent to the air pollutant emissions calculations for unblended diesel fuel.

3. Construction permits or operating permits issued under 567—Chapter 22 which restrict equipment fuel use to diesel fuel shall be considered by the department to include the biodiesel fuel blends specified in numbered paragraph "1," unless otherwise specified in 567—Chapter 22 or in a permit issued under 567—Chapter 22.

"Number 1 fuel oil" and "number 2 fuel oil," also known as "distillate oil," mean fuel oil that complies with the specifications for fuel oil number 1 or fuel oil number 2, as defined by the American Society of Testing and Materials (ASTM) D396-02, "Standard Specification for Fuel Oils."

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, number 1 fuel oil or number 2 fuel oil may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as "biodiesel fuel" is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in numbered paragraph "1" to be equivalent to the air pollutant emissions calculations for unblended number 1 fuel oil or unblended number 2 fuel oil.

3. Construction permits or operating permits issued under 567—Chapter 22 which restrict equipment fuel use to number 1 fuel oil or number 2 fuel oil shall be considered by

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

the department to include the biodiesel fuel blends specified in numbered paragraph "1," unless otherwise specified in 567—Chapter 22 or in a permit issued under 567—Chapter 22.

ARC 4160B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 22, "Controlling Pollution," Iowa Administrative Code.

The purpose of this rule making is to list additional equipment and processes that, due to their low emissions of regulated air pollutants, are not required to obtain construction permits.

In January 2005, the Department and representatives from ten Iowa industrial facilities, the Iowa Department of Economic Development, the University of Northern Iowa Air Emissions Assistance Program, and Region VII of the U.S. Environmental Protection Agency (EPA) convened to draft a plan to specify how "indoor" sources of air pollution are addressed in construction permitting. "Indoor" sources are sources of air pollution that are not directly vented to the outside but have emissions that leave the building through doors, vents, or other means. The Department has historically required that equipment or processes at these sources be permitted only if they were part of a significant project or if the emissions were exhausted indoors in a manner that was intended to circumvent the requirement to obtain a construction permit. Based on the recommendations of the work group, the Department is further clarifying through these amendments which equipment or processes are exempted from the requirement to obtain a construction permit. The Department believes that these amendments do not represent a relaxation of air pollution permitting or control requirements but represent historical expectations for construction permitting.

These amendments allow the use of exemptions from construction permitting currently authorized in administrative rule to be available for equipment and processes which are subject to a New Source Performance Standard (NSPS), National Emission Standard for Hazardous Air Pollutants (NESHAP), or other applicable federal standard provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. The amendments also develop a more extensive list of exemptions from the requirement to obtain a construction permit for equipment and processes with emissions that are expected to have little or no environmental or human health consequences. The additional exemptions will be added to the Iowa Administrative Code through two separate rule makings.

It is important to note that all construction permitting exemptions apply only to the requirement to obtain a construction permit and that the owner or operator of a source retains

the obligation to determine whether other air permitting requirements still apply to exempted equipment or processes and, if such obligations exist, to meet those.

Technical justifications were prepared by the work group members to support the validity of exempting certain equipment and processes from the requirement to obtain a construction permit. As a result of the technical reviews, additional safeguards were built into some of the exemptions to further protect human health and the environment.

Item 1 clarifies that the permitting exemptions in Chapter 22 do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Additionally, sources subject to certain regulatory requirements, such as an NSPS or NESHAP, may still use the exemptions from construction permitting listed in subrule 22.1(2) provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. This clarification allows for the option of obtaining a construction permit in instances where this may be desirable to limit potential to emit to avoid the applicability of some standards.

Item 2 adds 12 new construction permitting exemptions to Chapter 22. The exemption in paragraph "x" of subrule 22.1(2) includes various equipment, processes, and activities, many of which are listed as "trivial" activities from EPA's 1995 "White Paper for Streamlined Development of Part 70 Permit Applications." Equipment, processes, and activities that have no specific applicable requirements and result in extremely small emissions are considered to be "trivial" activities for purposes of Part 70 (Title V) operating permit applications. Based on the Department's technical review, these activities generate emissions that have little or no environmental or human health consequences and can therefore also be exempted from the requirement to obtain a construction permit. The other 11 exemptions include direct-fired fuel-burning equipment; closed refrigeration systems; cleaning and phosphating; powder coating operations; curing ovens used for powder coating operations; certain production painting, adhesives, or coating units; production surface coating activities that use only nonrefillable hand-held aerosol cans; certain production welding equipment; soldering; pressurized piping and storage systems; and emissions from the storage and mixing of paints, solvents, or flammable materials.

An additional 23 equipment types or processes were identified by the work group for possible exemption from the requirement to obtain a construction permit. Due to the complexity of some of the possible exemptions identified and time constraints on the work group, the work group agreed to meet at a later date to begin work on technical justifications to support the additional exemptions.

Any person may make written suggestions or comments on the proposed amendments on or before June 24, 2005. Written comments should be directed to Wendy Rains, Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094; or by electronic mail to wendy.rains@dnr.state.ia.us.

A public hearing will be held at 1 p.m. on June 13, 2005, in the conference rooms of the Department's Air Quality Bureau offices located at 7900 Hickman Road, Urbandale, Iowa. A second public hearing will be held at 1 p.m. on June 16, 2005, in the Gritter Room of Iowa Hall at Kirkwood Community College in Cedar Rapids, Iowa. Comments may be submitted orally or in writing at both public hearings. All comments must be received no later than June 24, 2005.

Any persons who intend to attend a public hearing and have special requirements such as those related to hearing or

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

mobility impairments should contact Wendy Rains at (515) 281-6061 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 22.1(2), introductory paragraph and first unnumbered paragraph, as follows:

22.1(2) Exemptions. ~~The provisions of this rule shall not apply to the following listed equipment or control equipment. The requirement to obtain a permit in 567—subrule 22.1(1) is not required for the equipment, control equipment, and processes listed in this subrule. If review of the equipment or the control equipment is necessary to comply with rule 22.4(455B), prevention of significant deterioration requirements; rule 22.5(455B), special requirements for nonattainment areas; The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Equipment, control equipment, or processes subject to 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, the exemption does not apply and a permit must be obtained. may still use the exemptions from construction permitting listed in this subrule provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. If equipment is permitted under the provisions of rule 22.8(455B), then no other exemptions shall apply to that equipment.~~

Records shall be kept at the facility for exemptions that have been claimed under the following paragraphs: 22.1(2)“a” (for equipment > 1.0 MMBTU/hour 1 million Btu per hour input), 22.1(2)“b,” 22.1(2)“e,” 22.1(2)“r” or 22.1(2)“s.” The records shall contain the following information: the specific exemption claimed and a description of the associated equipment. These records shall be made available to the department upon request.

ITEM 2. Amend subrule **22.1(2)** by adopting the following **new** paragraphs:

x. The following equipment, processes, and activities:

(1) Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

(2) Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

(3) Janitorial services and consumer use of janitorial products.

(4) Internal combustion engines used for lawn care, landscaping, and groundskeeping purposes.

(5) Laundry activities, not including dry-cleaning and steam boilers.

(6) Bathroom vent emissions, including toilet vent emissions.

(7) Blacksmith forges.

(8) Plant maintenance and upkeep activities and repair or maintenance shop activities (e.g., groundskeeping, general

repairs, cleaning, painting, welding, plumbing, retarring roofs, installing insulation, and paving parking lots), provided that these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit modification. Cleaning and painting activities qualify if they are not subject to control requirements for volatile organic compounds or hazardous air pollutants as defined in 22.100(455B).

(9) Air compressors and vacuum pumps, including hand tools.

(10) Batteries and battery charging stations, except at battery manufacturing plants.

(11) Equipment used to store, mix, pump, handle, or package soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, and aqueous salt or caustic solutions, provided that appropriate lids and covers are utilized and that no organic solvent has been mixed with such materials.

(12) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

(13) Vents from continuous emissions monitors and other analyzers.

(14) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

(15) Equipment used by surface coating operations that apply the coating by brush, roller, or dipping, except equipment that emits volatile organic compounds or hazardous air pollutants as defined in 22.100(455B).

(16) Hydraulic and hydrostatic testing equipment.

(17) Environmental chambers not using gases which are hazardous air pollutants as defined in 22.100(455B).

(18) Shock chambers, humidity chambers, and solar simulators.

(19) Fugitive dust emissions related to movement of passenger vehicles on unpaved road surfaces, provided that the emissions are not counted for applicability purposes and that any fugitive dust control plan or its equivalent is submitted as required by the department.

(20) Process water filtration systems and demineralizers, demineralized water tanks, and demineralizer vents.

(21) Boiler water treatment operations, not including cooling towers or lime silos.

(22) Oxygen scavenging (deaeration) of water.

(23) Fire suppression systems.

(24) Emergency road flares.

(25) Steam vents, safety relief valves, and steam leaks.

(26) Steam sterilizers.

y. Direct-fired equipment burning natural gas, propane, or liquefied propane with a capacity of less than 10 million Btu per hour input, and direct-fired equipment burning fuel oil with a capacity of less than 1 million Btu per hour input, with emissions that are attributable only to the products of combustion. Emissions other than those attributable to the products of combustion shall be accounted for in an enforceable permit condition or shall otherwise be exempt under this subrule.

z. Closed refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.

aa. Pretreatment application processes that use aqueous-based chemistries designed to prepare a substrate for an organic coating, provided that the chemical concentrate contains no more than 5 percent organic solvents by weight.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

This exemption includes pretreatment processes that use aqueous-based cleaners, cleaner-phosphatizers, and phosphate conversion coating chemistries.

bb. Indoor-vented powder coating operations with filters or powder recovery systems.

cc. Electric curing ovens or curing ovens that run on natural gas or propane with a maximum heat input of less than 10 million Btu per hour and that are used for powder coating operations, provided that the total cured powder usage is less than 75 tons of powder per year at the stationary source. Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that cured powder usage is less than the exemption threshold.

dd. Each production painting, adhesive or coating unit using an application method other than a spray system and associated cleaning operations that use 1,000 gallons or less of coatings and solvents annually, unless the production painting, adhesive or coating unit and associated cleaning operations are subject to work practice, process limits, emissions limits, stack testing, record-keeping or reporting requirements under 567—subrule 23.1(2), 567—subrule 23.1(3), or 567—subrule 23.1(4). Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that paint, adhesive, or solvent usage is at or below the exemption threshold.

ee. Any production surface coating activity that uses only nonrefillable hand-held aerosol cans, where the total volatile organic compound emissions from all these activities at a stationary source do not exceed 5.0 tons per year.

ff. Production welding.

(1) Welding using a consumable electrode, provided that the consumable electrodes used fall within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years.

For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

$Y = \text{the greater of } 1380x - 19,200 \text{ or } 200,000 \text{ for GMAW, or}$

$Y = \text{the greater of } 187x - 2,600 \text{ or } 28,000 \text{ for SMAW or FCAW,}$

where x is the minimum distance to the property line in feet, and Y is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limit must be applied.

(2) Resistance welding, submerged arc welding, or arc welding that does not use a consumable electrode, provided that the base metals do not include stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium and provided that the base metals are uncoated, excluding manufacturing process lubricants.

gg. Electric hand soldering, wave soldering, and electric solder paste reflow ovens.

hh. Pressurized piping and storage systems for natural gas, propane, liquefied petroleum gas (LPG), and refrigerants, where emissions could only result from an upset condition.

ii. Emissions from the storage and mixing of paints, solvents or flammable materials, provided that the emissions from the storage and mixing are accounted for in an enforceable permit condition or are otherwise exempt.

ARC 4158B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 23, “Emission Standards for Contaminants,” Iowa Administrative Code.

This amendment clarifies that ordinary travel on an unpaved public road includes routine traffic and road maintenance activities. Scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface are considered to be road maintenance activities that are classified as ordinary travel.

Unpaved public road maintenance activities such as scarifying, compacting, transporting road maintenance surfacing material, and scraping are not continuous by nature and are normally of a short duration at a specific location. These activities usually do not generate particulate matter in quantities sufficient to be considered a nuisance or a threat to public health. The Department has historically treated these types of road maintenance activities as ordinary travel.

Any person may make written suggestions or comments on the proposed amendment on or before June 17, 2005. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515)242-5094, or by electronic mail to christine.paulson@dnr.state.ia.us.

A public hearing will be held at 1 p.m. on June 15, 2005, in the conference rooms of the Department’s Air Quality Bureau offices located at 7900 Hickman Road, Urbandale, Iowa, at which time comments may be submitted orally or in writing. All comments must be received no later than June 17, 2005.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

This amendment is intended to implement Iowa Code section 455B.133.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend paragraph 23.3(2)“c,” subparagraph (1), introductory paragraph, as follows:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(1) Attainment and unclassified areas. ~~No person shall allow, cause or permit any materials to be handled, transported or stored; or a building, its appurtenances or a construction haul road to be used, constructed, altered, repaired or demolished, with the exception of farming operations or dust generated by ordinary travel on unpaved public roads, without taking reasonable precautions to prevent particulate matter in quantities sufficient to create a nuisance, as defined in Iowa Code section 657.1, from becoming airborne. A person shall take reasonable precautions to prevent particulate matter from becoming airborne in quantities sufficient to cause a nuisance as defined in Iowa Code section 657.1 when the person allows, causes or permits any materials to be handled, transported or stored or a building, its appurtenances or a construction haul road to be used, constructed, altered, repaired or demolished, with the exception of farming operations or dust generated by ordinary travel on unpaved roads. Ordinary travel includes routine traffic and road maintenance activities such as scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface. All persons, with the above exceptions, shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dusts beyond the lot line of the property on which the emissions originate. The public highway authority shall be responsible for taking corrective action in those cases where said authority has received complaints of or has actual knowledge of dust conditions which require abatement pursuant to this subrule. Reasonable precautions may include, but not be limited to, the following procedures.~~

ARC 4164B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission proposes to amend Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

The amendments clarify rules, remove outdated rules, incorporate Departmental guidelines and add new requirements.

There are some major changes in these amendments:

Ball float valves will no longer be allowed as a method of overfill protection at new tank installations. Overfills at tanks with ball floats cause pressurization of the tanks that can lead to unsafe conditions and release of product. Safer alternatives are available. Training is required for on-site personnel responsible for daily tank operation. Leak response and prevention rely heavily on operators on site to respond to warnings provided by leak detection equipment. The Department has found many on-site operators with little understanding of their leak detection and prevention equipment.

Tanks temporarily closed for more than three years will need to be permanently closed. When cathodic protection systems are not maintained, actions including closure can be required.

The amendments also provide actions that must be taken when cathodic protection is not maintained. For older tanks, such action could be integrity testing or permanent closure. More clearly defined training and certification requirements for cathodic protection testers are also included. The quality of inspections performed on cathodic protection systems has varied greatly. To ensure good inspections, the Department has established minimum requirements.

The temporary closure rule, subrule 135.15(1), has been restructured to separate out the requirements for easier reading. Additional requirements include yearly documentation from a third party that the tank system is being maintained and a three-year restriction on length of temporary closure. Storage tanks out of use for over three years are probably not going to be brought back into use.

Notification to the Department is required when the tank owner or operator changes. An explanation of "registration within 30 days of tank installation" has been added.

Department policy and guidance have been added for internal inspection of tank lining before adding cathodic protection, keeping spill containment basins clean, monitoring of product transfer, inspection criteria for cathodic protection systems, and record keeping. Product identification of tank fill containment lids is now required to help prevent delivery to the wrong tank, which can cause tank overfills.

Leak detection is required at least once per month at the highest level the tank is normally filled for that month. The subrule concerning automatic tank gauges now clearly states this requirement. The leak detection methods for manual tank gauging for certain tanks 1,100 gallons or less and statistical inventory reconciliation (SIR) have been added.

The operation of line leak detectors must be tested at least once per year per manufacturer's requirements. A change to paragraph 135.5(5)"a" requires the test to be a simulated leak.

For sample preparation and analysis of contaminated soil and water, U.S. EPA Methods 8015 and 8260 are being added to subrule 135.16(3) as approved analytical methods for benzene, ethylbenzene, toluene, and xylene.

Any interested person may submit written comments on the proposed amendments on or before Friday, June 10, 2005. Written comments should be sent to the Iowa Department of Natural Resources, Attn: Paul Nelson, Wallace State Office Building, Des Moines, Iowa 50319; fax (515)281-8895; or E-mail paul.nelson@dnr.state.ia.us.

Three public hearings will be held at the following locations:

May 31, 2005
1 p.m.

Coralville Public Library
1401 Fifth Street
Coralville, Iowa

June 1, 2005
1 p.m.

Norelius Community Library
1403 First Avenue South
Denison, Iowa

June 2, 2005
1 p.m.

Wallace State Office Building
Fourth Floor Conference Room
502 East Ninth Street
Des Moines, Iowa

Any person who intends to attend a public hearing and has special requirements such as those related to hearing or mo-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

bility impairments should contact Paul Nelson at (515)281-8779 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.474.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **135.1(3)**, paragraph “c,” introductory paragraph, as follows:

c. Deferrals. Rules 135.3(455B), 135.4(455B), 135.5(455B), 135.6(455B) and ~~135.9~~ 135.15(455B) do not apply to any of the following types of UST systems:

ITEM 2. Amend rule **567—135.2(455B)**, definition of “operator,” as follows:

“Operator” means any person in control of, or having responsibility for, the daily operation of the UST system. “Operator” includes any person leasing a UST system.

ITEM 3. Amend subrule 135.3(1), introductory paragraph, as follows:

135.3(1) Performance standards for new UST systems. *All portions of the UST system that contain product must be constructed with material that is compatible with the substance stored. Leak detection, spill and overfill equipment must also be compatible with the substance stored.* In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

ITEM 4. Amend subrule **135.3(1)**, paragraph “a,” subparagraph (2), numbered paragraph “3,” as follows:

3. Impressed current systems are designed to allow determination of current operating status as required in 135.4(2)“e e.” *Determination of current operating status may be accomplished by providing the rectifier with ampere and voltage meters that can be read by the owner and operator for comparison to the design standard set by the corrosion expert or a device that can warn the owner and operator when changes in ampere and voltage occur outside the design standard set by the corrosion expert; and*

ITEM 5. Amend subrule **135.3(1)**, paragraph “a,” subparagraph (2), by renumbering numbered paragraph “4” as “6” and adopting **new** numbered paragraphs “4” and “5” as follows:

4. Impressed current systems must be designed not to cause stray current that can damage other underground structures (i.e., metal electrical conduits, water lines, gas lines);

5. Local utilities must be contacted when impressed current systems are installed or changes are made to the system, including an increase to amp or voltage rectifier output;

ITEM 6. Amend paragraph **135.3(1)“a,”** subparagraph (4), numbered paragraph “1,” as follows:

1. The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operational life. *The corrosion expert must provide a time limit for the operational life of the tank for the site; and*

ITEM 7. Amend paragraph **135.3(1)“b,”** introductory paragraph, as follows:

b. Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified ~~below:~~ *in this rule.*

All piping must be installed according to the manufacturer's specifications and be compatible with the product stored and the environment to which it will be exposed. Piping must maintain its original specifications and structural integrity. Piping whose structural integrity has degraded must be replaced. All piping installations must meet National Fire Prevention Association, 2000 Edition, Standards NFPA 30 and 30A as adopted by the state fire marshal in 661— Chapter 51, Flammable and Combustible Liquids.

ITEM 8. Amend paragraph **135.3(1)“b,”** subparagraph (1), introductory paragraph, as follows:

(1) The piping is constructed of fiberglass-reinforced plastic or other nonmetal material that meets third-party certification for use with the regulated substance; or

ITEM 9. Amend paragraph **135.3(1)“b,”** subparagraph (3), numbered paragraph “1,” as follows:

1. The piping is installed at a site that is determined by a corrosion expert to not to be corrosive enough to cause it to have a release due to corrosion during its operating life. *The corrosion expert must provide a time limit for the operational life of the piping for the site; and*

ITEM 10. Amend paragraph **135.3(1)“c,”** subparagraph (1), by amending numbered paragraph “2,” and by adopting **new** numbered paragraphs “3” and “4” as follows:

2. Overfill prevention equipment that will:

Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

Alert the transfer operator when the tank is no more than 90 percent full by ~~restricting the flow into the tank or triggering a high-level alarm; or~~

~~Restrict flow 30 minutes prior to overfilling, alert the operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.~~

3. ~~Ball float vent valves or other devices that restrict the vent line shall not be used to meet the overfill requirement in paragraph “2” unless the valves or devices are in place prior to October 1, 2005.~~

4. ~~Any ball float vent valve must be removed if installed on a tank with a remote fill, a tank that receives product delivery by pumping (pressurized filling), or a suction system at the dispenser that can release product through an air eliminator valve. Replacement of these ball float vent valves with another device must be completed by January 1, 2006.~~

ITEM 11. Amend paragraph **135.3(2)“b,”** subparagraph (2), numbered paragraph “2,” as follows:

2. The tank has been installed for less than ten years and is monitored for releases in accordance with 135.5(4)“d” through “h” “i”; or

ITEM 12. Amend subrule **135.3(2)**, paragraph “b,” subparagraph (3), by adopting the following **new** numbered paragraph “3”:

3. If cathodic protection is added a year or more after lining a tank, an integrity test of the steel tank is required for exemption from the required internal inspections of the lining. The tank must be internally tested to determine the thickness of the steel, corrosion hole-free status of the tank, and any re-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

pairs that may have been made in order to line the tank. The tank must meet the integrity requirements for lining. If an integrity test is not conducted, the lining of the tank must be internally inspected as required in 135.3(2)“b”(1)“2.”

ITEM 13. Amend paragraph **135.3(3)“c”** as follows:

c. An owner or operator who brings into use an underground storage tank after July 1, 1985, shall complete and submit to the department a copy of the notification form provided by the department within 30 days of installing the tank in the ground. *The installation date of the tank is considered the date the tank and lines are covered and tightness testing is completed.* The owner or operator shall not allow the deposit of any regulated substance into the tank without prior approval of the department or until the tank has been issued a tank registration tag and is covered by an approved financial responsibility mechanism in accordance with 567—Chapter 136.

ITEM 14. Amend paragraph **135.3(3)“k”** as follows:

k. If an owner or operator fails to register an underground storage tank within 30 days after installation or obtain annual renewal tags by April 1, the owner or operator shall pay an additional \$250 upon registration of the tank or application for tank tag renewal. *The installation date of the tank is considered the date the tank and lines are covered and tightness testing is completed.* The imposition of this fee does not preclude the department from assessing an additional administrative penalty in accordance with Iowa Code section 455B.476.

ITEM 15. Amend subrule **135.3(3)** by adopting the following **new** paragraph **“l”**:

l. When the owner or operator of an underground storage tank changes:

(1) The current owner or operator must notify the department of the name, address and telephone number of the new owner and operator within 10 days of the ownership change.

(2) At the time of owner or operator change, the current owner or operator must notify the new owner or operator of the requirement to submit a registration form to the department with change in owner and operator information and proof of financial responsibility.

(3) The new owner or operator must submit a registration form with the change in owner and operator information and proof of financial responsibility meeting the requirements of 567—Chapter 136 within 15 days of owner or operator transfer.

(4) If the new owner or operator does not have the required financial responsibility coverage, the owner or operator must temporarily close the tanks in accordance with rule 135.15(455B). The tanks must remain temporarily closed until the owner or operator provides proof of financial responsibility to the department.

(5) The current tank tag shall stay with the tank during ownership change.

(6) Unpaid tank management fees from the previous owner must be paid before new tank tags will be issued. The new owner shall not be required to pay any late fees attributed to the prior owner.

(7) The new owner or operator is responsible for correcting any compliance or maintenance requirements that have not been satisfied during the prior ownership or operation.

ITEM 16. Amend paragraph **135.3(5)“e”** as follows:

e. The owner or operator must return the tank tags upon request of the department for failure to meet the requirements of rules 135.3(455B) to 135.5(455B) or the financial respon-

sibility rules in 567—Chapter 136, after permanent tank closure or, when tanks are temporarily closed for *over more than 12 months*, or when the tank system is suspected of leaking and the responsible party fails to respond as required in subrule 135.8(1). The department will not return the tags until the tank system is in full compliance with the technical requirements of this chapter and financial responsibility requirements of 567—Chapter 136.

ITEM 17. Rescind subrule 135.4(1) and adopt the following **new** subrule in lieu thereof:

135.4(1) Spill and overfill control.

a. The owner and operator are responsible for any product spills and overfills that may occur. The owner and operator must ensure that releases due to spilling or overfilling do not occur during product transfer. At a minimum, the owner and operator must ensure the following:

(1) When ordering product, that the volume available in the tank is greater than the volume of product ordered. The maximum tank volume available is considered the level at which the overfill shutoff device engages;

(2) At the time of product delivery, the product level must be verified by sticking the tank through the fill pipe with a graduated stick that can measure within 1/8 inch or by using an automatic tank gauge calibrated for the tank. The volume available is determined by subtracting the measured product level from the product level that triggers the overfill shutoff device. The volume available in the tank must be compared to the bill of lading from the product transport driver before the transfer is made;

(3) That the overfill prevention device is present and functioning properly prior to product delivery. The owner and operator must ensure that no tampering with the overfill device or the tank system has occurred to prevent the overfill device from functioning;

(4) That the spill containment basin is liquid-tight and in good operational condition prior to product delivery. The spill containment basin must be checked for any cracks or holes. Any liquid such as water and any debris must be removed from the spill containment basin prior to transfer of the product. The correct product color-symbol coded lid must be located on each spill containment basin;

(5) After product transfer, that the spill containment basin is inspected and any product removed; and

(6) That at least one employee on site during the deposit is trained in correct product transfer procedures and proper response to overfill conditions. If no employees are present on site during product transfer, the owner and operator remain responsible for ensuring that proper transfer procedures are followed. If a spill occurs during transfer operations, the company transferring the product to the tank shall also be considered a responsible party under 567—Chapter 133 and is responsible for notifying the department of the spill under 567—Chapter 131.

NOTE: The transfer procedures described in National Fire Protection Association Publication 385 or American Petroleum Institute Recommended Practice 1007, “Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles” may be used to comply with 135.4(1)“a.” Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, “Recommended Practice for Bulk Liquid Stock Control at Retail Outlets,” and National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code.”

b. To ensure product delivery to the correct tank, each tank fill pipe and fill containment lid must be color-symbol coded for product identification. If more than one tank con-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

tains the same product, the tanks must be numbered. To maintain uniformity in color-symbol coding, the color-symbol codes in the American Petroleum Institute Standard RP 1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals," must be used. Tank owners and operators must train on-site employees in product identification and color-symbol codes.

c. The owner and operator must investigate, report, and clean up any spills and overfills in accordance with 135.6(4).

ITEM 18. Amend subrule **135.4(2)** by rescinding paragraphs "b," "c," and "d" and adopting new paragraphs "b," "c," "d" and "e" as follows:

b. Cathodic protection tester. A cathodic protection inspection must be conducted by a qualified cathodic protection tester. A qualified cathodic protection tester is a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. The person must have education and experience in soil resistivity, stray current, structure-to-soil potentials, and electrical isolation measurements on such structures.

At a minimum, a person must be certified by the National Association of Corrosion Engineers (NACE) as a CP Level 1 Cathodic Protection Tester or have received training and certification approved by the department which applies similar certification, training and standards. A NACE-certified or equivalent cathodic protection tester is required for any inspection conducted after September 1, 2006.

c. Inspection of galvanic cathodic protection systems. A qualified cathodic protection tester must perform the inspections. The UST owner or operator must obtain documentation of the cathodic protection tester's qualifications and maintain it as part of the owner's or operator's records. The documentation must be provided to the department upon request. The cathodic protection inspection must be in accordance with the following requirements:

(1) Frequency.

1. Testing must be performed within six months of and at least every three years after installation, repair of the cathodic protection system, or any equipment addition/replacement to the UST system; or

2. Every year when structure-to-soil potentials of the tank or lines begin showing anode depletion by an increase in structure-to-soil potentials (a more positive number) from original design criteria.

(2) Inspection criteria. The criteria used to determine if cathodic protection is adequate must be in accordance with a code of practice developed by a nationally recognized association. At a minimum, the department's cathodic protection monitoring form must be used and followed. A copy of the inspection report must be submitted to the department within 14 days of the inspection. An inspection must include the following:

1. Documentation of the name and qualifications of the cathodic protection tester;

2. Review of the cathodic protection system's design and history of operation. Any changes made to the underground storage tank system and site since the last inspection shall be noted;

3. Test of the electrical continuity of the underground storage tank system. Components of the tank system must show isolation from each other in galvanic systems. In impressed current systems, the tanks and lines should show electrical continuity;

4. Structure-to-soil potentials for each tank must be tested at a minimum of three locations directly above the tank structure at the center and ends of each tank;

5. Structure-to-soil potentials for piping must be tested above the piping at the ends of each piping run and in the middle. Testing should not be done where anodes are located;

6. When testing structure-to-soil voltage potential, the saturated copper/copper sulfate reference electrode must be in direct contact with the soil or backfill material. The test should not be conducted on soil heavily contaminated with petroleum. If the soil is dry, water may need to be added to get a good electrical connection. Testing conducted with the reference electrode on concrete or asphalt paving above tanks or product lines is considered invalid. Test holes may need to be drilled through concrete or asphalt to access soil or backfill material;

7. For galvanic cathodic protection systems, any structure-to-soil potential reading less negative than a negative 850 mV is considered a failed test for the system.

NOTE: Additional information can be found in National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems."

d. Inspection of impressed current cathodic protection systems. Yearly inspections must be completed by a qualified cathodic protection tester. The UST owner or operator must obtain documentation of the cathodic protection tester's qualifications and maintain it as part of the owner's or operator's records. The documentation must be provided to the department upon request. The cathodic protection inspection must be in accordance with the following requirements:

(1) Frequency. Testing must be conducted within six months after installation or repair of the cathodic protection system, or any equipment addition or replacement to the UST system, and every year thereafter.

(2) Inspection criteria. The criteria used to determine if cathodic protection is adequate must be in accordance with a code of practice developed by a nationally recognized association. At a minimum, the department's cathodic protection monitoring form must be used and followed. A copy of the inspection report must be submitted to the department within 14 days of the inspection. An inspection must include the following:

1. Documentation of the name and qualifications of the cathodic protection tester;

2. Review of the cathodic protection system's design and history of operation. Any changes made to the underground storage tank system and site since the last inspection shall be noted;

3. Test of the electrical continuity of the underground storage tank system. Components of the tank system must show isolation from each other in galvanic systems. In impressed current systems, the tanks and lines must show electrical continuity;

4. Structure-to-soil potentials for each tank must be tested at a minimum of three locations directly above the tank structure at the center and ends of each tank;

5. Structure-to-soil potentials for piping must be tested above the piping at the ends of each piping run and in the middle. Testing should not be done where anodes are located;

6. When testing structure-to-soil voltage potential, the saturated copper/copper sulfate reference electrode must be in direct contact with the soil or backfill material. The test should not be conducted on soil heavily contaminated with

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

petroleum. If the soil is dry, water may need to be added to get a good electrical connection. Testing conducted with the reference electrode on concrete or asphalt paving above tanks or product lines is considered invalid. Test holes may need to be drilled through concrete or asphalt to access soil or backfill material;

7. The structure-to-soil potential tests must meet the polarization reading more negative than a negative 850 mV immediately after the rectifier is turned off (instant off) or the 100 mV polarization decay (the difference between the "instant off" polarization reading and unprotected native steel reading);

8. The rectifier must be checked for proper operation including amperage and voltage output to the anodes. If a junction box is present, the current to each anode must be checked at each shunt.

NOTE: Additional information can be found in National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems."

e. Impressed current systems must also be inspected at least every 30 days to ensure the equipment is running properly. The owner or operator can conduct these inspections. When owners or operators do not conduct the inspections or inconsistently conduct the inspections, the department may require a third party be contracted to conduct the inspections. The record of the inspections must contain:

(1) The operating current output (amps) and power consumption (voltage) of the rectifier established by the corrosion expert who designed the system; and

(2) The current output (amps) and power consumption (voltage) of the rectifier recorded and compared to the designed operating levels established by the corrosion expert who designed the system.

(3) Any change in the amps or voltage may indicate problems with the system and inadequate cathodic protection. When any change in amps or voltage is observed outside the acceptable range established by the corrosion expert for the cathodic protection system, the problem must be noted on the chart with the rectifier readings. The owner or operator must contact a cathodic protection tester or corrosion expert about the change in amp or voltage readings to determine if further action is required.

(4) Any repairs must be conducted under the direction of a corrosion expert who must recertify the cathodic protection system. The investigation report and any repairs must be kept as part of the site's records.

ITEM 19. Amend subrule **135.4(2)** by adopting new paragraph "**f**" as follows:

f. When an impressed current cathodic protection system is not providing cathodic protection for the time periods given below, the owner or operator shall take the following actions:

(1) Temporary loss of power. If there is a loss of power to the rectifier since the last 30-day inspection, no action is required if ampere and voltage readings are at design levels when power is restored.

(2) When cathodic protection has not been providing adequate corrosion protection for up to six months. A cathodic protection tester must check the system within 30 days of discovering the system is not functioning. Within 45 days, the owner or operator shall submit the following documentation to the department:

1. The cathodic protection tester's report of the cathodic protection system and documentation of any repairs. The system's design standards shall be included;

2. The reason for the loss of cathodic protection;

3. A copy of the 30-day inspection records (if impressed current) and leak detection records for the past year; and

4. A copy of the design standards prior to loss of protection.

(3) When cathodic protection has not been providing adequate corrosion protection for six months to one year.

1. The owner or operator shall tightness test the tanks and lines in accordance with 135.5(4)"c" within 14 days of discovery;

2. Within 10 days, the owner or operator shall submit to the department the last inspection of the cathodic protection system by a cathodic protection tester, the cathodic protection system's design standards, the past year's monthly leak detection records and the 30-day inspection report of the cathodic protection system (if impressed current);

3. Within 30 days, the owner or operator shall provide an explanation to the department in writing of why the cathodic protection system was not providing protection and include why the system malfunction was not discovered during the required 30-day inspection of amperage and voltage readings;

4. A corrosion expert must certify the tank system is still suitable for corrosion protection. Documentation of the corrosion expert's inspection, repair and recertification of the cathodic protection system must be submitted to the department;

5. If it is determined that the tank is not suitable for corrosion protection, the tank must be permanently closed in accordance with 135.15(455B).

(4) When cathodic protection is not functioning for more than 12 months.

1. The owner or operator shall immediately empty and stop using the tank system.

2. Steel product lines must be permanently closed.

3. The age of the tank must be within the manufacturer's warranty or the tank shall have met current tank standards for corrosion protection at the time of installation in order to be brought back into use. A tank not meeting these criteria must be permanently closed.

4. The owner may request that the department allow a tank to be returned to use. The request must include test and evaluation procedures the owner plans to follow to ensure tank integrity for reestablishing cathodic protection.

5. At a minimum, the tank system must pass system tightness tests, have an internal inspection to determine structural condition of the steel tank, and have the cathodic protection system inspected by a corrosion expert. A corrosion expert must certify the integrity of the tank system in order to reestablish cathodic protection and allow continued use of the tank system.

6. Following approval of the test and evaluation procedures, the owner or operator shall submit to the department all tests performed on the tank system and the report from the corrosion expert. Copies of the last two inspections by a cathodic protection tester and the past year's 30-day inspection log should be included.

7. If the tank is unable to be or will not be brought back into immediate use, the tank system must be permanently closed in accordance with 135.15(455B).

ITEM 20. Amend paragraph **135.4(4)"d,"** subparagraph (2), as follows:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in 135.5(4)“d” through “h” “i”; or

ITEM 21. Amend paragraph **135.4(5)“b,”** subparagraph (5), as follows:

(5) Results of the site investigation conducted at permanent closure (435.15(5) 135.15(3)).

ITEM 22. Amend paragraph **135.4(5)“c”** as follows:

c. Availability and maintenance of records. Owners and operators must keep the records required either:

(1) At the UST site and immediately available for inspection by the department; or

(2) At a readily available alternative site and be provided *provide them* for inspection to the department upon request *within two business days or other period of time approved by the department.*

NOTE: In the case of permanent closure records required under ~~135.15(5)~~ 135.15(6), owners and operators are also provided with the alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

ITEM 23. Amend rule 567—135.4(455B) by adopting **new** subrule 135.4(6) as follows:

135.4(6) Training of on-site personnel. Owners and operators are responsible for having one person on site with training on the UST system's leak detection, product delivery, spill prevention and emergency response to spills and overfills. Owners and operators responsible for the daily operation of a UST system must provide training and post instructions for each item in paragraphs “a” and “b” for employees to follow. Owners and operators must ensure that there is at least one on-site employee who is trained in the following:

a. Tank and line leak detection and spill response.

(1) How the tank and line leak detection methods in use indicate a leak. Examples are audible alarms, reduced product flow at the dispensers, shutdown of submersible pumps, flashing lights, and automatic tank gauging test result print-outs.

(2) Whom to immediately contact if a leak is suspected.

(3) What a catastrophic line leak means and how to shut down the system if a line leak is suspected.

(4) Where leak detection records are stored.

(5) Proper procedures for responding to spills and releases.

b. Dispenser nozzle automatic shutoff. If the automatic shutoff in the dispenser nozzle no longer functions when fueling vehicles, the dispenser nozzle must be bagged or otherwise secured to prevent use until repairs can be made.

When the department determines during a facility inspection that there are no on-site personnel able to demonstrate competency under paragraphs “a” and “b” above or a person responsible for the competency requirements in subrule 135.4(1), the owner and operator will be required to retrain the personnel.

ITEM 24. Amend rule 567—135.4(455B) by adopting **new** subrule 135.4(7) as follows:

135.4(7) UST sites operating with no on-site personnel.

a. The owner or operator shall check on the proper operation of the UST equipment and any product leaks at least once each day of operation.

b. The owner or operator must check spill and overflow equipment within 24 hours prior to fuel delivery for proper operation and removal of any water or other material. The spill containment devices at the fill pipe must be checked

within 24 hours after fuel delivery, and any fuel spilled must be removed.

c. At sites with pressurized piping, in-line leak detectors must be used that shut off the submersible pump and stop product flow to the dispenser when a leak is detected. By July 1, 2006, existing sites must have installed an in-line leak detector capable of shutting off the submersible pump.

d. At sites with containment basins and sump sensors for leak detection, the sump sensors must shut off product flow when a leak is detected.

e. Emergency instructions as required in Section 9.5.3 of NFPA 30A shall be conspicuously posted in the dispenser area.

ITEM 25. Amend paragraph **135.5(1)“a,”** subparagraph (2), as follows:

(2) Is installed, calibrated, operated, and maintained in accordance with manufacturer's instructions, including routine maintenance and service checks *at least once per year* for operability or running condition; and

ITEM 26. Amend subrule **135.5(1)** as follows:

Rescind paragraph “c” and adopt the following **new** paragraph “c” in lieu thereof:

c. When an owner or operator continually shows the inability to conduct leak detection with the method being used, the department may require the owner or operator to find an alternative leak detection method and may require temporary closure until the owner or operator can demonstrate compliance. If an owner or operator does not consistently conduct leak detection as required, the department may require the owner or operator to contract with a third party to perform leak detection at the site and may require temporary closure until the owner or operator can demonstrate compliance.

Amend paragraph “d” as follows:

d. Any existing UST system that cannot apply a method of release detection that complies with the requirements of this rule must complete the closure procedure in rule 135.15(455B). ~~by the date on which the release detection is required for that UST system under paragraph “c.”~~

Adopt **new** paragraph “e” as follows:

e. At least once per month, owners or operators must visually inspect all aboveground piping, connections and equipment containing a regulated substance for leaks. This includes checking inside dispensers and any containment sumps. An inspection log must be kept as part of the site records. If the aboveground piping, connections and equipment are in leakproof containment sumps with automatic leak sensors, the visual inspection is not required.

ITEM 27. Amend subrule **135.5(2)**, paragraph “a,” as follows:

a. Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in 135.5(4)“d” to “h” “i” except that:

ITEM 28. Amend subrule **135.5(4)**, paragraph “b,” as follows:

b. Manual tank gauging. Manual tank gauging must meet the following requirements:

(1) Tank liquid level measurements are taken at the beginning and ending ~~end of a period of at least 36 hours the test period~~ during which no liquid is added to or removed from the tank;

(2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending ~~end of the period~~;

(3) The equipment used is capable of measuring the level

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

of product over the full range of the tank's height to the nearest 1/8 of an inch;

(4) A leak is suspected and subject to the requirements of

rule 135.6(455B) if the variation between the beginning and ending measurements exceeds the weekly or monthly standards in the following table. *Immediately contact the department if these standards are exceeded.*

Nominal Tank Capacity	Weekly Standard (one test)	Monthly Standard (average of four tests)
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons

Nominal Tank Capacity	Minimum Duration of Test	Weekly Standard (one test)	Monthly Standard (four-test average)
550 gallons or less	36 hours	10 gallons	5 gallons
551-1,000 gallons (when tank diameter is 64 inches)	44 hours	9 gallons	4 gallons
551-1,000 gallons (when tank diameter is 48 inches)	58 hours	12 gallons	6 gallons
551-1,000 gallons (also requires annual tank tightness testing)	36 hours	13 gallons	7 gallons
1,001-2,000 gallons (also requires annual tank tightness test)	36 hours	26 gallons	13 gallons

(5) Only tanks of 550 gallons or less nominal capacity or tanks of 551 to 1,000 gallons nominal capacity with diameters of 64 inches or 48 inches may use this as the sole method of release detection. Tanks of 551 to 2,000 gallons may use this method in place of manual inventory control in 135.5(4)“a.” Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this rule.

ITEM 29. Amend paragraph 135.5(4)“c” by adopting the following new unnumbered paragraph:

The tank tightness test procedure must be certified by a third party and meet U.S. EPA testing procedures. The testing procedures are found in Standard Test Procedures for Evaluating Leak Detection Methods: Volumetric Tank Tightness Testing Methods (EPA/530/UST-90/004) March 1990 or Non Volumetric Tank Tightness Testing Methods (EPA/530/UST-90/005) March 1990.

ITEM 30. Amend paragraph 135.5(4)“d” as follows:

d. Automatic tank gauging (ATG). Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(1) The automatic product level monitor test can detect *at least* a 0.2 gallon-per-hour leak rate from any portion of the tank that routinely contains product. *A leak must be declared if the measured leak rate exceeds the leak threshold for the method used; and*

(2) ~~Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of 135.5(4)“a.”~~ *The leak test must be performed within 20 percent of the highest product level in the tank for that month.*

(3) *The automatic tank gauging equipment must be certified by a third party and meet U.S. EPA testing procedures in Standard Test Procedures for Evaluating Leak Detection Methods: Automatic Tank Gauging Systems (ATGS) (EPA/530/UST-90/006) March 1990.*

ITEM 31. Amend paragraph 135.5(4)“e” by adopting the following new subparagraph (8):

(8) The vapor product detector must be certified by a third party and meet U.S. EPA testing procedures in Standard Test Procedures for Evaluating Leak Detection Methods: Vapor-Phase Out-of-Tank Product Detectors (EPA/530/UST-90/008) March 1990.

ITEM 32. Amend paragraph 135.5(4)“g,” subparagraph (1), by adding the following new numbered paragraphs “1” to “4”:

1. All tank and piping secondary containment systems shall be tested upon installation and every 36 months thereafter. For existing systems, the first test must be performed within 36 months of [insert effective date of this amendment]. All testing must demonstrate that the secondary containment system is structurally sound and tight and functions in accordance with the manufacturer's standards.

2. All testing shall be performed in accordance with the secondary containment system manufacturer's guidelines or standards.

3. In the case of pressure/vacuum testing, any loss in pressure/vacuum during the course of the test shall be considered a failed test. An inert gas shall be used for any pressure testing.

4. The secondary containment of the tanks shall be checked for a product release or water before testing.

ITEM 33. Amend subrule 135.5(4) by relettering paragraph “h” as “i” and adopting the following new paragraph “h”:

h. Statistical inventory reconciliation (SIR). A method for statistical inventory reconciliation that tests for the loss of product must meet the following requirements:

(1) The statistical test must be able to detect at least a 0.2 gallon-per-hour leak rate from any portion of the tank that routinely contains product; and

(2) The report by the SIR company must provide the leak threshold (leak rate at which a leak is declared), the calculated leak rate (leak rate calculated from the inventory records) and minimum detectable leak rate (minimum leak rate that can be determined from the inventory records).

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

1. A “pass” means that the calculated leak rate for the data set is less than the leak threshold and the minimum detectable leak rate is less than or equal to the certified performance standard;

2. A “fail” means the calculated leak rate for the data set is equal to or greater than the leak threshold;

3. An “inconclusive” means the minimum detectable leak rate exceeds the certified performance standard and the calculated leak rate is less than the leak threshold. If for any other reason the test result is not a “pass” or “fail,” the result is “inconclusive”;

4. Owners and operators must notify the department in accordance with rule 135.6(455B) when a monthly SIR report of “fail” occurs or two consecutive “inconclusive” results occur.

(3) Owners and operators must ensure that the SIR analytical results are complete and available to the owners and operators for review within two weeks after the last day of monthly data set collection. The reports must be available to the department upon request.

(4) The statistical inventory reconciliation method must be certified by a third party and meet U.S. EPA testing procedures in Standard Test Procedures for Evaluating Leak Detection Methods: Statistical Inventory Reconciliation Methods (SIR) (EPA/530/UST-90/007) March 1990.

ITEM 34. Amend subrule **135.5(5)** as follows:

Rescind paragraph “a” and adopt the following **new** paragraph “a” in lieu thereof:

a. Automatic line leak detectors. The automatic line leak detector must be installed on all pressurized lines and be able to detect leaks of at least 3 gallons per hour at 10 pounds per square inch line pressure within one hour.

(1) At sites with personnel on site, the line leak detector must alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm.

(2) At sites operating at any time without personnel on site, the line leak detector must shut off the flow of regulated substances through the pipe to prevent further release of product. At existing UST facilities operating without personnel on site on [insert effective date of this amendment], a line leak detector capable of shutting off product flow in the pipe must be installed by March 1, 2006.

(3) For double-wall piping, monitoring of the interstice cannot be used alone to meet this requirement. An in-line leak detector must be installed.

(4) An annual test of the operation of the leak detector must be conducted. The test must be a quantitative test of a simulated leak meeting the manufacturer’s requirements to verify the ability to respond to at least a 3 gallons-per-hour leak. The test cannot be an internal electronic check of the equipment.

Amend paragraphs “b” and “c” as follows:

b. Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon-per-hour leak rate at one and one-half times the operating pressure. *The line leak detection method must be certified by a third party and meet U.S. EPA testing procedures in Standard Test Procedures for Evaluating Leak Detection Methods: Pipeline Leak Detection Methods (SIR) (EPA/530/UST-90/007) March 1990.*

c. Applicable tank methods. Any of the methods in 135.5(4)“e” to “h” “i” may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

ITEM 35. Amend paragraph **135.5(6)“a”** as follows:

a. All written performance claims pertaining to any release detection system in use, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for ~~five years, or for another reasonable period of time determined by the department, from the date of installation~~ *the life of the release detection equipment*;

ITEM 36. Amend the table in rule **567—135.14(455B)** by adding the following **new** entry:

	Soil (mg/kg)	Groundwater (mg/L)
TEH Waste Oil	N/A	400

ITEM 37. Rescind subrule 135.15(1) and adopt the following **new** subrule in lieu thereof:

135.15(1) Temporary closure.

a. UST systems not meeting either the performance standards in subrule 135.3(1) for new UST systems or the upgrading requirements in subrule 135.3(2) by December 22, 1998, must be permanently closed according to subrule 135.15(2). The tanks cannot be brought back into use.

b. When a UST system in compliance with new tank standards is temporarily closed, owners and operators must:

(1) Continue operation and maintenance of corrosion protection in accordance with subrule 135.4(2);

(2) Continue operation and maintenance of any release detection in accordance with rule 135.5(455B) unless the system is empty. The UST system is empty when all materials have been removed using commonly employed practices. No more than 2.5 centimeters (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system may remain in the system;

(3) Comply with rules 135.6(455B) to 135.12(455B) if a release is suspected or confirmed;

(4) Maintain financial responsibility (i.e., insurance) in accordance with 567—Chapter 136. If at any time financial responsibility coverage will be terminated and new coverage cannot be obtained, a site check for contamination must be completed before coverage is terminated. A site check must use the closure-in-place sampling procedures in 135.15(3)“b” and “d” or the Tier 1 site assessment in 135.9(455B). If the tanks are located in a contaminated area with active monitoring and remediation, the tank owner may request that the check for contamination not be required and shall provide justification.

(5) Continue to pay the tank management fee required in 135.3(5).

c. When a UST system is closed for 3 to 12 months, an owner must notify the department in writing of the temporary closure and include a third-party inspection report of the tank system. The inspection must be conducted according to the department’s third-party inspection form and certify that all temporary closure requirements are completed. UST fund board-certified inspectors or installers must be used for third-party inspection. The owner shall complete the requirements in paragraph “b” above for temporary closure and complete the following:

(1) Certify that the UST system is empty of all regulated substances.

(2) Certify that vent lines are open and functioning.

(3) Certify that all other lines, pumps, accesses, and ancillary equipment are capped and locked.

(4) For lined tanks, provide a copy of the last internal inspection.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(5) Provide proof of financial responsibility (i.e., insurance) according to 567—Chapter 136.

(6) Provide certification that the corrosion protection system is being maintained in accordance with 135.4(2), and include certification that electricity is being maintained to operate the impressed current cathodic protection system if present.

d. When a tank system is closed for more than 12 months, the owner must annually request an extension of the temporary closure along with payment of the tank management fee. The request must include:

(1) A current copy of proof of financial responsibility.

(2) The first request for extension must include a site check according to 135.6(3)“b” using the closure-in-place sampling procedures in 135.15(3)“b” and “d” or the Tier 1 site assessment in 135.9(455B). The site check or Tier 1 site assessment shall have been completed after operation ceased and the tank system emptied of all product.

(3) Third-party inspection report certifying that temporary closure requirements are being met. The department’s temporary closure inspection form must be used.

(4) Documentation that the tank site and UST system are being actively marketed for sale or lease as a petroleum marketing facility.

(5) Copies of the cathodic protection inspections for the tank system. If the cathodic protection system has not been maintained as required in 135.4(455B), the tanks must be permanently closed unless an internal integrity test is conducted and the tanks are found structurally sound and suitable for continued application of cathodic protection. Any steel piping must be permanently closed.

(6) For a lined tank, a copy of the last internal inspection. If the lining did not pass the last inspection and no repairs were made, the tank must be permanently closed.

e. Owners or operators of tanks that have been temporarily closed for 12 months or more as of [insert effective date of this amendment] and have been upgraded to meet new tank standards may apply for the extension in accordance with paragraph “d.”

f. When a tank system is temporarily closed for more than three years, the tank system must be permanently closed.

g. Before bringing a tank back into active use, the following must be completed and submitted to the department by the owner or operator before issuance of tank tags and beginning operation:

(1) A third-party inspection certifying the tank system is in operational condition. This must include inspection and testing of leak detection, spill, and overfill equipment for proper operation.

(2) Current tank and line precision test results, and leak tests of all containment systems for tightness. The tests would include, but not be limited to, containment sumps, tank secondary containment interstice and piping secondary containment interstice.

(3) A copy of the last two cathodic protection tests and the past year’s 30-day ampere and voltage readings, if applicable.

(4) For a lined tank, a current internal inspection of the lining must be conducted and a copy of the internal inspection report submitted.

(5) Proof of financial responsibility in accordance with 567—Chapter 136.

(6) Payment of any back tank management fees plus any additional fees.

ITEM 38. Amend subrule **135.15(2)** by rescinding paragraph “d” and adopting **new** paragraphs “d” and “e” as follows:

d. The department’s permanent closure guidance documents for tank and piping removal and for filling in place must be followed in the removal and replacement of tanks and piping.

The following documents or portions thereof are referenced as mandatory requirements when permanently closing underground storage tanks and piping:

National Fire Protection Association (NFPA) 326, Standard for the Safeguarding of Tanks and Containers for Entry
American Petroleum Institute (API) 1604, “Removal and Disposal of Used Underground Petroleum Storage Tanks”

API Publication 2015, “Safe Entry and Cleaning of Petroleum Storage Tanks”

API Publication 2217A, “Guidelines for Confined Space Work in the Petroleum Industry,” 1997

API Publication 1631, “Interior Lining of Underground Storage Tanks”

OSHA, Title 29, CFR, Part 1910.146, “Permit-Required Confined Spaces”

OSHA, Title 29, CFR, Part 1910.147, “The Control of Hazardous Energy (Lockout/Tagout)”

OSHA, Title 29, CFR, Part 1926, Subpart P, “Excavations”

National Institute for Occupational Safety and Health (NIOSH), “Criteria for a Recommended Standard for Working in Confined Spaces”

e. Closure notification must be made using DNR Form 542-1308, Notification of Tank Closure or Change-in-Service. The form must include the date scheduled for the closure or replacement of the tanks or lines. Oral confirmation of the closure date must be given the DNR field office 24 hours prior to the actual closure. The required assessment of the excavation zone in 135.15(3) must be performed after notifying the department but before completion of the permanent closure or change-in-service.

ITEM 39. Amend subrule **135.15(2)** by adopting the following **new** paragraph “f”:

f. Financial responsibility in accordance with 567—Chapter 136 must be maintained until after the permanent closure report required in 135.15(3) is submitted and accepted by the department.

ITEM 40. Amend paragraph **135.15(3)“a,”** second unnumbered paragraph, as follows:

All such samples shall be collected separately and shipped to a laboratory certified under 567—Chapter 42 83, ~~Part C,~~ within 72 hours of collection. Samples shall be refrigerated and protected from freezing during shipment to the laboratory.

ITEM 41. Amend subrule **135.15(7)**, second unnumbered paragraph, as follows:

If the department has a reasonable basis to suspect a release has occurred, the release investigation and confirmation steps of ~~subrule 135.8(1) rule 135.6(455B)~~ and the corrective action requirements as provided in 135.7(455B) to ~~135.8(455B) 135.12(455B)~~ shall apply.

ITEM 42. Amend rule 567—135.16(455B), introductory paragraph and subrule 135.16(1), as follows:

567—135.16(455B) Laboratory analytical methods for petroleum contamination of soil and water from underground storage tanks.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

135.16(1) General. When ~~having soil or water analyzed~~ *analyzing* for petroleum or hazardous substances, owners and operators of UST systems must use a laboratory certified under 567—Chapter 83. In addition, ~~they owners and operators~~ must ensure that all ~~soil and groundwater~~ samples are properly preserved and shipped within 72 hours of collection to a laboratory certified under 567—Chapter 83, ~~for UST petroleum analyses~~. This rule provides acceptable analytical procedures for petroleum substances and required information that must be provided in all laboratory reports.

ITEM 43. Amend subrule 135.16(3) as follows:

135.16(3) Analysis of soil and water for high volatile petroleum compounds (i.e., gasoline, benzene, ethylbenzene, toluene, xylene). Sample preparation and analysis ~~shall~~ *may* be by:

a. Method OA-1, “Method for Determination of Volatile Petroleum Hydrocarbons (gasoline),” revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa. This method is based on U.S. EPA Methods 5030, 8000, and 8015, SW-846, “Test Methods for Evaluating Solid Waste,” 3rd Edition. ~~Copies of Method OA-1 are available from the department, or~~

b. U.S. EPA Method 8015B or 8260B, SW-846, “Test Methods for Evaluating Solid Waste.”

ITEM 44. Amend subrule 135.16(4) as follows:

135.16(4) Analysis of soil and water for low volatile petroleum hydrocarbon contamination (i.e., all grades of diesel fuel, fuel oil, kerosene, oil, and mineral spirits). Sample preparation and analysis shall be by Method OA-2, “Determination of Extractable Petroleum Products (and Related Low Volatility Organic Compounds),” revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa. This method is based on U.S. EPA Methods 3500, 3510, 3520, 3540, 3550, 8000, and 8100, SW-846, “Test Methods for Evaluating Solid Waste,” 3rd Edition. ~~Copies of Method OA-2 are available from the department.~~

ITEM 45. Amend subrules 135.17(2) and 135.17(3) as follows:

135.17(2) Individual claims. The financial ability of individual owners and operators of USTs with or without an active business (including but not limited to sole proprietorships and general partnerships), ~~shall~~ *may* be evaluated using the “Individual Ability to Pay Guidance” ~~documents dated June 19, 1992, most current version of “INDIPAY” developed by the U.S. Environmental Protection Agency~~ and generally accepted principles of financial analysis. This guidance is only one tool the department may use in evaluating claims of financial inability.

135.17(3) Corporate claims. The financial ability of corporate owners and operators of USTs ~~shall~~ *may* be evaluated using the ~~June 1992 most current~~ version of “ABEL” developed by the U.S. Environmental Protection Agency and generally accepted principles of financial analysis. The guidance is only one tool the department may use in evaluating claims of financial inability.

ITEM 46. Amend **567—Chapter 135, Appendix C**, Article III and Article V, as follows:

III. Term of Covenants

The covenants contained herein shall be deemed covenants running with the land, and shall remain in full force and effect until ~~the DNR approval of an~~ earlier of the termination of these covenants by the Declarant, or by Declarant’s successors and assigns, or twenty-one (21) years after

the date these covenants are recorded in the Office of the County Recorder of the county where the Property is located. These covenants may be extended for successive twenty-one (21)-year periods by the filing of a verified claim in accordance with Iowa Code § 614.24, ~~which~~ *The* verified claim may be filed by the DNR or any other party holding any lien or other interest in the property.

V. Termination of Covenants

The covenants contained herein shall terminate twenty-one (21) years after the date these covenants were recorded in the Office of the County Recorder, unless extended in accordance with Iowa Code § 614.24; ~~provided, however, that the Declarant,~~ *The DNR or the Declarant*, or the Declarant’s successors and assigns, may execute and file a notice of termination in the Office of the County Recorder of the county where the Property is located. *Termination may only be executed upon written approval of the DNR.*

ARC 4170B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 1, “Iowa Ethics and Campaign Disclosure Board,” Iowa Administrative Code.

The proposed amendment clarifies that persons requesting an advisory opinion concerning the application of the ethics and lobbying laws in Iowa Code chapter 68B are to be referred to the Senate and House Ethics Committees.

The proposed amendment does not contain a waiver provision as no new obligation is being imposed.

Any interested person may make written comments on the proposed amendment on or before May 31, 2005. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68B.32A(11).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend subrule 1.2(1) as follows:

1.2(1) Who may request opinion. Any person subject to the board’s jurisdiction may request a board advisory opinion, including a local official or local employee seeking an opinion on the application of the ethics laws in Iowa Code chapter 68B. A governmental entity not under the board’s jurisdiction may request a board advisory opinion on an issue

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

subject to the board's jurisdiction. *A person requesting an opinion on the application of the ethics and lobbying laws in Iowa Code chapter 68B as applied to the legislative branch of state government shall be referred to the senate and house ethics committees.* An authorized agent may seek an opinion on behalf of any person. The board will not issue an opinion to an unauthorized third party. The board may on its own motion issue opinions without receiving a formal request.

ARC 4171B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The proposed amendment changes the official committee address from that of the treasurer to the candidate in the case of a candidate's committee and to the chairperson of a committee for all other types of committees. This change is being made as the law mandates that the candidate or chairperson is the person responsible for filing campaign reports and the Board's communications have historically been sent to these individuals. The proposed amendment also states the Board's policy of communicating by electronic mail whenever possible.

The proposed amendment does not contain a waiver provision as no obligation is being imposed.

Any interested person may make written comments on the proposed amendment on or before May 31, 2005. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68A.201.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule 4.4(2) as follows:

4.4(2) Committee address and telephone number. The address and telephone number of the ~~treasurer~~ *candidate* as indicated on the statement of organization shall be ~~considered to be the official committee address and telephone number to be used for routine communication from the board to the candidate's committee.~~ *The address and telephone number of the committee chairperson as indicated on the statement of organization shall be the official address and telephone number to be used for communication from the board to every*

other committee except for a candidate's committee. If an electronic mail address has been provided on the statement of organization, communication from the board to a committee shall be sent by electronic mail.

ARC 4169B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 218.4 and 249A.4, the Department of Human Services proposes to rescind Chapter 15, "Disputed County Billings," and adopt new Chapter 15, "Resolution of Legal Settlement Disputes," and to amend Chapter 29, "Mental Health Institutes," and Chapter 30, "State Hospital-Schools," Iowa Administrative Code.

2004 Iowa Acts, chapter 1090, amended Iowa Code section 225C.8 to create a process for resolution by a contested case hearing under Iowa Code chapter 17A when a county or counties and the Department of Human Services fail to resolve a question of legal settlement. These amendments implement the process for resolving disputes about legal settlement in relation to county charges for the cost of care for:

- A person at a state resource center pursuant to Iowa Code chapter 222; or
- A person at a state mental health institute pursuant to Iowa Code chapter 230; or
- A person receiving medical assistance under Iowa Code chapter 249A.

The amendments provide a process for certifying legal settlement of persons admitted to state mental health institutes or state resource centers, for notifying parties of a dispute over legal settlement, and for referring the dispute for a contested case hearing under Iowa Code chapter 17A if the dispute cannot be resolved within 90 days of the notification.

These amendments do not provide for waivers in specified situations. Most of the provisions of these amendments are set by statute and therefore cannot be waived. The Department has adopted a general rule on exceptions at rule 441—1.8(17A,217) that may be used to request waiver of a nonstatutory requirement.

Any interested person may make written comments on the proposed amendments on or before June 1, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

The Department will hold a public hearing for the purpose of receiving comments on these amendments on June 1, 2005, from 1 to 3 p.m. in First Floor Southeast Conference Room 1, Hoover State Office Building, 1305 East Walnut Street, Des Moines. Comments may be offered at the hearing either orally or in writing.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Anyone who intends to attend the hearing and has special requirements, such as hearing or vision impairments, should contact the Office of Policy Analysis at (515)281-8440 and advise of special needs.

These amendments are intended to implement Iowa Code section 225C.8.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind 441—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15

RESOLUTION OF LEGAL SETTLEMENT DISPUTES

These rules provide a mechanism for resolution of legal settlement disputes related to county liability for the cost of care provided in a state mental health institute, in a state resource center, or through the state medical assistance program. When a county and the department cannot agree on a legal settlement determination, the matter shall be resolved through a contested case hearing before an administrative law judge.

441—15.1(225C) Definitions. The following definitions apply within this chapter.

“Certification” means the process of accepting or rejecting a determination of legal settlement, as defined in rules 441—29.4(230) and 441—30.3(222).

“Department” means the Iowa department of human services.

“Legal settlement” means a person’s status as defined in Iowa Code sections 252.16 and 252.17.

“Notice” or “notification” includes written or electronic mailing.

“Services” means mental health, mental retardation, developmental disability, brain injury, or substance abuse services.

“State case” means a person who does not have a county of legal settlement as defined in Iowa Code sections 252.16 and 252.17.

441—15.2(225C) Assertion of legal settlement dispute.

15.2(1) Notification of dispute.

a. By county. A county shall provide written notice of dispute to the department when the county objects to a billing for services rendered on or after July 1, 2004, that are a county obligation under Iowa Code chapter 222, 230, or 249A or objects to a certification of legal settlement made by the department or another county.

(1) The county shall provide the notice within 120 days of receipt of the billing or certification. A billing shall be considered received 5 days after mailing by the department, unless the county affirmatively shows that the billing was received later. If notification of a dispute does not occur within 120 days of the receipt date, the dispute shall not be eligible for resolution pursuant to subrule 15.3(2).

(2) The notice of dispute may be mailed to Administrator, DHS Division of Fiscal Management, 1305 E. Walnut Street, Des Moines, Iowa 50319-0114; faxed to (515)281-6237; or sent by E-mail to bzimmer@dhs.state.ia.us.

(3) When a county asserts that a person has legal settlement in another county, the written notice of dispute shall also be given to that county at the same time as the notice is given to the department.

b. By department. Within 120 days of receipt of a certification of a legal settlement, the department shall notify all affected counties when the department objects to the certification of legal settlement.

15.2(2) Supporting evidence. A notification of a legal settlement dispute pursuant to subrule 15.2(1) shall be accompanied by evidence supporting the determination. The evidence shall include all available information used to make a determination of legal settlement as defined in Iowa Code sections 252.16 and 252.17.

a. Supporting evidence shall include, but need not be limited to:

(1) The current and former addresses of the person, including the dates for the period when the person resided at each address;

(2) The person’s current services and service history, including the name and location of the provider and the dates when services were received;

(3) The history of addresses and services received by the person’s custodial parent or guardian (when the person takes the legal settlement of the custodial parent or guardian as defined in Iowa Code section 252.16);

(4) Copies of any court orders affecting a minor’s custody or guardianship; and

(5) Any other information needed to make a determination of legal settlement.

b. Copies of the following forms may be submitted as supportive evidence, if properly completed:

(1) Form 470-3439, Legal Settlement Worksheet.

(2) A county central point of coordination application.

(3) Form 470-4160, Notice of Court Action on Mental Health Hospitalization.

c. If a county asserts that a person’s legal settlement is unknown so that the person is deemed a state case, the county that makes the assertion shall provide documentation of all attempts made by the county to ascertain the facts necessary to make a legal settlement determination. Documentation shall include:

(1) Information about each person contacted during the investigation, including the person’s name, address, telephone number, and E-mail address if available;

(2) The information obtained during the investigation; and

(3) Identification of the person conducting the investigation.

441—15.3(225C) Response to dispute notification.

15.3(1) Verification of receipt. Within 45 days of receipt of the notification of dispute, the department and the county shall each verify the date of receipt by responding to the party providing the notification.

15.3(2) Failure to resolve dispute. Any of the affected counties or the department may request a contested case hearing conducted under Iowa Code chapter 17A if:

a. The dispute is not resolved within 90 days of receipt of the notification of dispute; or

b. The affected counties and the department agree at any time that the dispute cannot be resolved within the 90-day period.

15.3(3) Preparation of motion. The party requesting the contested case hearing shall:

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. Prepare a written motion that the matter be referred to the department of inspections and appeals for a contested case hearing; and

b. Submit copies to all affected counties and the department's division of fiscal management.

15.3(4) Response to motion. The division of fiscal management shall certify the matter to the department of inspections and appeals, division of appeals, for a contested case hearing by an administrative law judge to determine the person's legal settlement status.

15.3(5) Motion not submitted. If a party does not submit a motion for a contested case hearing within 120 days after receipt of the notification of dispute, the matter shall be closed and the person's legal settlement shall be in the county that was billed for services provided to the person.

441—15.4(225C) Contested case hearing. The determination of legal settlement by the administrative law judge is considered a final agency action.

15.4(1) Application of hearing decision. The decision of the administrative law judge shall include an order for payment for services as follows:

a. If legal settlement is found to be with a county, the county shall pay amounts due for the person's services and shall reimburse the department or another county for amounts that were paid for the person's services before the issuance of the decision. If payment is not made within 45 days of the date of decision, a penalty may be applied pursuant to Iowa Code section 222.68, 222.75, or 230.22.

b. If the person is deemed a state case, the department shall credit the county for any amounts paid for the person's services before the issuance of the decision. The credit shall be issued on a county billing no later than the end of the quarter following the date of decision.

15.4(2) Judicial review. Any of the parties may file an application for rehearing in accordance with Iowa Code section 17A.16(2). Judicial review of the determination may be filed in district court in accordance with Iowa Code section 17A.19. The party that does not prevail in the determination or in a judicial review is liable for costs associated with the proceeding. The costs of the judicial review process, including reimbursement of the actual costs to the department of inspections and appeals, shall be assessed against the losing party.

441—15.5(225C) Change in determination. If, after a determination of legal settlement by mutual agreement or by decision of an administrative law judge, additional evidence becomes available that could change the outcome of the determination, the procedures in rule 441—15.2(225C) apply.

15.5(1) The affected counties or the department may change the determination by mutual agreement.

15.5(2) A party may make a motion for reconsideration by the department of inspections and appeals.

These rules are intended to implement Iowa Code section 225C.8.

ITEM 2. Amend 441—Chapter 29 by adopting **new** rule 441—29.4(230) as follows:

441—29.4(230) Certification of settlement.

29.4(1) Certification data. By the end of the next working day following a person's admission, the facility shall send a copy of Form 470-4161, DHS Institution Admission Core Data, by facsimile to the central point of coordination of the county of admission. If the facility is aware that the county of legal settlement may be other than the admitting county, the facility shall also:

a. Alert the admitting county; and

b. Send a copy of Form 470-4161 to the other county by facsimile.

29.4(2) County response. Within four working days after receiving Form 470-4161, the admitting county shall return to the facility page 3 of the form, the response sheet for determining legal settlement.

a. If the central point of coordination for the admitting county accepts legal settlement, the admitting county shall mark the response sheet accordingly. No supporting evidence is necessary.

b. If the central point of coordination for the other county notified by the facility accepts legal settlement, that county shall return the response sheet marked accordingly and notify the admitting county.

c. If the central point of coordination for the admitting county finds the person's legal settlement to be in another Iowa county, the admitting county shall mark the response sheet accordingly and shall send certification as described in Iowa Code section 230.4 to the county auditor of the other county. A copy of the evidence supporting the determination as prescribed in subrule 29.4(3) shall accompany the certification. If the other county disputes the certification, that county may file a notice of dispute under rule 441—15.2(225C).

d. If the central point of coordination for the admitting county finds that the person has not acquired legal settlement in an Iowa county, the admitting county shall mark the response sheet accordingly and shall send certification as described in Iowa Code section 230.5 to the Administrator, DHS Division of Fiscal Management, 1305 E. Walnut Street, Des Moines, Iowa 50319-0114. A copy of the evidence supporting the determination as prescribed in subrule 29.4(3) shall accompany the certification.

29.4(3) Supporting evidence. The supporting evidence shall include all available information used to make a determination of legal settlement as defined in Iowa Code sections 252.16 and 252.17.

a. Supporting evidence shall include, but need not be limited to:

(1) The current and former addresses of the person, including the dates for the period when the person resided at each address;

(2) The person's current services and service history, including the name and location of the provider and the dates when services were received;

(3) The history of addresses and services received by the person's custodial parent or guardian (when the person takes the legal settlement of the custodial parent or guardian as defined in Iowa Code section 252.16);

(4) Copies of any court orders affecting a minor's custody or guardianship; and

(5) Any other information needed to make a determination of legal settlement.

b. Copies of the following forms may be submitted as supportive evidence, if properly completed:

(1) Form 470-3439, Legal Settlement Worksheet.

(2) A county central point of coordination application.

(3) Form 470-4160, Notice of Court Action on Mental Health Hospitalization.

c. If a county asserts that a person's legal settlement is unknown so that the person is deemed a state case, the county that makes the assertion shall provide documentation of all attempts made by the county to ascertain the facts necessary to make a legal settlement determination. Documentation shall include:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) Information about each person contacted during the investigation, including the person's name, address, telephone number, and E-mail address if available;

(2) The information obtained during the investigation; and

(3) Identification of the person conducting the investigation.

This rule is intended to implement Iowa Code sections 230.1 through 230.6, 230.10, and 230.11.

ITEM 3. Amend **441—Chapter 30** as follows:

Amend the chapter title as follows:

CHAPTER 30

STATE HOSPITAL-SCHOOLS RESOURCE CENTERS

Amend subrule 30.1(1) as follows:

30.1(1) The visiting hours at the state hospital-schools resource centers shall be from 9 a.m. to 11 a.m.; and 1 p.m. to 4 p.m. for on-ward visit visits; and from 8:30 a.m. to 8:30 p.m. for off-campus visit visits. Visiting hours may be extended at the superintendent's or designee's discretion when visitors are from great distances or when are able to make only rare visits.

Adopt **new** rule 441—30.3(222) as follows:

441—30.3(222) Certification of settlement.

30.3(1) Certification. At the time of a person's application for admission to a resource center, the board of supervisors shall certify through the central point of coordination process that the legal settlement of the person applying for admission is one of the following:

- a. In the county from which the application is received or where the court is located;
- b. In another county in Iowa;
- c. In another state or in a foreign country; or
- d. Unknown.

30.3(2) Supporting evidence.

a. If legal settlement is certified in the county of admission, no supporting evidence is necessary.

b. If legal settlement is certified in another county, the certification shall be sent to that county as described in Iowa Code section 222.63. A copy of the evidence supporting the determination, as described in paragraphs "d" and "e," shall accompany the certification.

c. If the central point of coordination for the admitting county finds that the person has not acquired legal settlement in an Iowa county, the admitting county shall send the certification as described in Iowa Code section 222.64 to the Administrator, DHS Division of Fiscal Management, 1305 E. Walnut Street, Des Moines, Iowa 50319-0114. The certification shall be accompanied by a copy of the evidence supporting the determination, as described in paragraphs "d," "e," and "f."

d. The supporting evidence shall include all available information used to make a determination of legal settlement as defined in Iowa Code sections 252.16 and 252.17. The evidence shall include, but need not be limited to:

(1) The current and former addresses of the person, including the dates for the period when the person resided at each address;

(2) The person's current services and service history, including the name and location of the provider and the dates when services were received;

(3) The history of addresses and services received by the person's custodial parent or guardian when the person takes the legal settlement of the custodial parent or guardian as defined in Iowa Code section 252.16;

(4) Copies of any court orders affecting a minor's custody or guardianship; and

(5) Any other information needed to make a determination of legal settlement.

e. Copies of the following forms may be submitted as supportive evidence, if properly completed:

(1) Form 470-3439, Legal Settlement Worksheet.

(2) A county central point of coordination application.

(3) Form 470-4160, Notice of Court Action on Mental Health Hospitalization.

f. If a county asserts that a person's legal settlement is unknown so that the person is deemed a state case, the county that makes the assertion shall provide documentation of all attempts made by the county to ascertain the facts necessary to make a legal settlement determination. Documentation shall include:

(1) Information about each person contacted during the investigation, including the person's name, address, telephone number, and E-mail address if available;

(2) The information obtained during the investigation; and

(3) Identification of the person conducting the investigation.

This rule is intended to implement Iowa Code sections 222.50 and 222.60 through 222.79.

ARC 4168B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments:

- Update the Medicaid eligibility requirement that an applicant furnish or apply for a social security number by making an exception for people who have well-established religious objections to applying for or using a national identification number. This exception is allowed by federal Medicaid regulations at 42 CFR 435.910. Iowa has issued a few waivers to this rule, principally for members of the Old Order Amish. This amendment will conform the rule to federal policy and eliminate the need for waivers.

- Clarify a Medicaid eligibility requirement relating to a person who is in a penal institution. 42 U.S.C. 1396d(a)(A) provides that assistance provided under the Medicaid program shall not include any "payments with respect to care or services for any individual who is an inmate of a public institution." Federal regulations at 42 CFR 435.1008 provide that federal Medicaid funding is not available for expenditures for services provided to "inmates of public institutions," defined in the regulations as "a person who is living in a public institution."

The Department's current rule based on these federal provisions uses different wording, referring to "persons who enter jails or penal institutions." This wording has caused con-

HUMAN SERVICES DEPARTMENT[441](cont'd)

fusion because it restricts Medicaid eligibility for people who are on probation or work release or who leave jail for hospitalization. In all these situations, Medicaid eligibility is allowable under the federal definition. The Department's intent has been to limit medical assistance only as required by federal provisions. Therefore, the Department proposes to amend the rule to use the language of the federal provisions and reference the federal definition of "inmate of a public institution."

- Make technical corrections to the implementation sentences to make them internally consistent and to reflect current statutes.

These amendments do not provide for waivers in specified situations because they benefit the people affected.

Any interested person may make written comments on the proposed amendments on or before June 1, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 441—75.7(249A), introductory paragraph, as follows:

441—75.7(249A) Furnishing of social security number. As a condition of eligibility, ~~people a person~~ for whom Medicaid is being requested or received must furnish ~~their a~~ social security account ~~numbers number~~ or must furnish proof of application for the ~~numbers number~~ if ~~they have the social security number~~ has not been issued or ~~are~~ is not known and provide ~~their numbers the number~~ upon receipt. *This requirement does not apply if the person refuses to obtain a social security number because of well-established religious objections. The term "well-established religious objections" means that the person is a member of a recognized religious sect or a division of a recognized religious sect and adheres to the tenets or teachings of the sect or division, and for that reason is conscientiously opposed to applying for or using a national identification number.*

ITEM 2. Amend rules **441—75.10(249A)**, **441—75.11(249A)**, **441—75.13(249A)**, **441—75.17(249A)**, **441—75.18(249A)**, and **441—75.21(249A)** by adopting the following **new** implementation sentence for each rule:

This rule is intended to implement Iowa Code section 249A.3.

ITEM 3. Rescind rule 441—75.12(249A) and adopt the following **new** rule in lieu thereof:

441—75.12(249A) Inmates of public institutions. A person is not eligible for medical assistance for any care or services received while the person is an inmate of a public institution. For the purpose of this rule, the phrase "inmate of a public institution" is defined by 42 CFR Section 435.1009, as amended on November 10, 1994.

This rule is intended to implement Iowa Code section 249A.3.

ITEM 4. Amend rule **441—75.14(249A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 239.5 249A.3 and 249A.4.

ITEM 5. Amend rule **441—75.16(249A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 239.5 249A.3 and 249A.4.

ITEM 6. Amend rules **441—75.25(249A)** and **441—75.27(249A)** by adopting the following **new** implementation sentence for each rule:

This rule is intended to implement Iowa Code sections 249A.3 and 249A.4.

ITEM 7. Amend **441—Chapter 75, Division I**, by rescinding the implementation sentence at the end thereof.

ARC 4134B

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 249A.4 and 249A.20A(10), the Department of Human Services proposes to amend Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments complete the implementation of the Medicaid preferred drug list initiated by rule making published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3154B**. These amendments:

- Rescind provisions on drug prior authorization that were retained to cover the transition from the previous authorization system to use of the preferred drug list.

- Add nonprescription drugs designated as preferred drugs to the list of nonprescription drugs payable under Medicaid.

- Simplify and clarify the rule on drug pricing. Effective with the implementation of the preferred drug list on January 15, 2005, brand-name drugs are covered only if they are preferred or if prior approval has been received. Therefore, prior approval or certification of medical necessity is not required again to exempt brand-name drugs from the maximum allowable cost or the state maximum allowable cost.

These amendments do not provide for waivers in specified situations. Waivers may be requested under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before June 1, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4138B**. The purpose

HUMAN SERVICES DEPARTMENT[441](cont'd)

of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 249A.20.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 4133B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Termination
and
Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44, the Department of Human Services terminates rule-making proceedings under the provisions of Iowa Code section 17A.4(1)"b" for proposed rule making relating to Chapter 182, "Family-Centered Services," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 2, 2005, as **ARC 4013B** to solicit comments on amendments that were Adopted and Filed Emergency and published as **ARC 4019B** on the same date. Those amendments have been superseded by amendments that were Adopted and Filed Emergency and are published herein as **ARC 4135B**. Therefore, the Department is terminating the rule making for **ARC 4013B**.

Pursuant to the authority of Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44, the Department of Human Services proposes to amend Chapter 150, "Purchase of Service," and Chapter 152, "Contracting," to rescind Chapter 182, "Family-Centered Services," and adopt a new Chapter 182 with the same title, and to amend Chapter 185, "Rehabilitative Treatment Services," Iowa Administrative Code.

These amendments implement flexible family-centered service components as part of the legislatively mandated redesign of the child welfare services system through:

- A new Chapter 182, "Family-Centered Services," developed to describe the new, more flexible family-centered service components that will be available to support children and families.
- Changes to Chapters 150, 152, and 185 to set the contracting requirements necessary to provide additional service flexibility in the family-centered program.

Under these amendments, Department staff will be able to purchase the following new service components:

- Family team meeting facilitation, which will increase the Department's capacity to use the family team approach to case planning, a method that promotes more effective engagement and assessment of families in child welfare services and leads to the design of more effective service plans.

- Parental counseling and education, which will use a mixture of counseling and educational instruction techniques to work with parents or caretaker relatives to deal with social, emotional, and behavioral issues or gaps in parenting skills that prevent them from adequately meeting the needs of children.

- Relative home studies, which will provide a funding source for evaluation of kinship placements as an alternative to placement in foster care.

- Community resource procurement, which will reimburse providers for their time spent researching and organizing the community services, supports, and goods needed by a family to provide for a child's safety and well-being, such as locating a safe residence for a homeless family.

These amendments also create a flexible family support fund, which will allow providers to receive state reimbursement when they purchase approved goods or support for a family, such as food, furniture, or short-term rent assistance, in order for the family to safely provide for their children.

Under these amendments:

- All family-centered services are available when the Department has opened a child welfare service case due to an allegation of child abuse or neglect or due to a child's adjudication as a "child in need of assistance."

- Supervision, family team meeting facilitation, relative home study, community resource procurement, and flexible family support fund services are available when the Department has initiated a child protective assessment on a child or an order has been issued setting the date for an adjudication hearing or a prehearing conference on a "child in need of assistance" petition.

- Supervision and nonrehabilitative treatment services are available when Juvenile Court Services has opened a case on a youth who has been adjudicated delinquent or is the subject of a consent decree.

Voluntary requests for services will not establish eligibility. Families that are already receiving services but that do not qualify under the new rules will be allowed a two-month transition period.

Providers that have contracts for purchase of social services or rehabilitative treatment or supportive services will add these new services to their existing contracts. Providers that wish to offer only the new services of family team meeting facilitation, relative home studies, community resource procurement, or flexible family support fund may enter into an individual service contract with the state pursuant to rules of the Department of Administrative Services.

These amendments establish statewide reimbursement rates for family team meeting facilitation, community resource procurement, and relative home studies based on review of available data. Rates for parental counseling and education will be an average of rates for therapy and counseling and skill development services, based either on the lowest rates currently in effect for the provider in each category or on the weighted average rates for providers that do not currently have a rate in effect. This approach makes implementation less complicated and removes the burden on providers to submit cost reports.

The goal of these amendments is to increase purchasing flexibility and add new types of services that support the Department's model of child welfare practice and better meet the needs of the population of children and families being served in the child welfare system. Provider documentation requirements have been streamlined where possible.

These amendments do not provide for waivers in specified situations. Individuals who believe themselves disadvan-

HUMAN SERVICES DEPARTMENT[441](cont'd)

tagged by the rules may request a waiver under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before June 1, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4135B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 4144B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 104, “Amusement Devices,” and Chapter 105, “Registered Amusement Devices,” Iowa Administrative Code.

The proposed amendments are designed to implement changes made by 2004 Iowa Acts, chapter 1118, concerning who may offer electrical and mechanical amusement devices to the public, providing for limits on the total number of devices allowed to be registered, modifying the fees required for registering the devices, and establishing penalties applicable for underage use of the devices and for other improper uses of the devices. The proposed amendments provide that electrical and mechanical amusement devices that are required to be registered can be located only at a location which has been issued a Class “A,” “B,” “C,” or “D” liquor control license or a Class “B” or a Class “C” beer permit. Persons who have registered an amusement device as of April 28, 2004, that is not located at one of these liquor control or beer permit locations may offer the devices only until July 1, 2005.

In addition, the proposed amendments also provide that:

- The total number of amusement devices registered by the Department cannot exceed the number registered as of April 28, 2004. In addition, a person locating the device at a location for which only a Class “B” or a Class “C” beer permit has been issued cannot register any additional devices after April 28, 2004, and cannot relocate devices properly registered prior to April 28, 2004, to a different location.

- Amusement devices required to be registered shall include, by January 1, 2006, a counting mechanism to deter-

mine business volume and shall include, by July 1, 2005, for devices located where a Class “B” or a Class “C” beer permit has been issued, a security device that prevents operation of the device without action by the owner.

- A person owning or leasing an electrical and mechanical amusement device required to be registered shall not advertise the availability of the device as other than an electrical and mechanical amusement device.

- The current \$2,500 annual registration fee applies to manufacturers, manufacturer's representatives, and for-profit owners of two or fewer amusement devices. The proposed amendments provide that the annual registration fee for distributors shall be \$5,000. A distributor is a person that owns registered amusement devices that are offered for use by the public at more than a single location.

- For awarding a cash prize in violation of the statute, the Department shall revoke the registration of a person for ten years, the person's liquor control license or beer permit shall be suspended for a period of 14 days, and, if the person has only a beer permit, the person's sales tax permit shall also be suspended for 14 days.

- A person under the age of 21 cannot operate an electrical and mechanical amusement device required to be registered, and a person owning or leasing a device cannot knowingly allow a person under the age of 21 to operate such a device. The proposed amendments provide that a person under the age of 21 who operates a device in violation of this provision commits a scheduled violation with a scheduled fine of \$250.

The proposed amendments do not provide for waivers because the Department is implementing the provisions contained in 2004 Iowa Acts, chapter 1118. Other provisions contained in 481—Chapters 104 and 105, Iowa Administrative Code, provide opportunities for persons to appeal the actions of the Department.

Any interested person may make written suggestions or comments on the proposed amendments on or before May 31, 2005. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail may be sent to david.woerner@dia.state.ia.us.

There will be a public hearing on June 1, 2005, at 10 a.m. in Conference Room 320 of the Lucas State Office Building, Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who intends to attend the public hearing and has special requirements such as hearing or mobility impairments should contact the Department of Inspections and Appeals and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 99B as amended by 2004 Iowa Acts, chapter 1118.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 481—104.1(10A,99B) as follows:

Amend the introductory paragraph as follows:

481—104.1(10A,99B) Definitions. Definitions in rule 481—100.1(10A,99B) and 481—105.1(10A,99B) are incorporated by reference in this chapter.

Amend the definition of “amusement device” as follows:

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

"Amusement device" means an electrical ~~or~~ *and* mechanical device possessed and used in accordance with Iowa Code section 99B.10. An amusement device is neither a game of skill or chance as defined in Iowa Code section 99B.1, nor a gambling device. Roulette wheels, slot machines, and other devices specified in Iowa Code section 725.9 as gambling devices are not amusement devices.

ITEM 2. Amend rule 481—104.2(99B), introductory paragraph, as follows:

481—104.2(99B) Device restrictions. An electrical and mechanical amusement device may be owned, possessed, or offered for use by any person at any location *which has a Class "A," Class "B," Class "C," or Class "D" liquor control license issued pursuant to Iowa Code chapter 123*, but only if the amusement device complies with all of the following:

ITEM 3. Amend rule **481—104.6(99B)** by adding the following **new** numbered paragraphs:

4. Violation of any laws pertaining to gambling may result in revocation of a registration.

5. The department may revoke a registration or refuse to issue a registration for cause.

6. A registration may be revoked if the registrant or agent of the registrant violates or permits a violation of Iowa Code chapter 99B.

7. A registration may be revoked upon the violation of any rule adopted by the department under this chapter.

8. A registration may be revoked if the registrant or an agent of the registrant engages in any act or omission that would have permitted the department to refuse to issue a registration under Iowa Code chapter 99B.

9. The registration of a registered amusement device may be revoked upon evidence of noncompliance with any laws or rules governing such devices.

10. A person under the age of 21 shall not participate in the operation of an electrical and mechanical amusement device. A person who violates the provisions of Iowa Code section 99B.10C(1) commits a scheduled violation under Iowa Code section 805.8C(4).

11. A person who owns or leases an electrical and mechanical amusement device and knowingly allows a person under the age of 21 to participate in the operation of an electrical and mechanical amusement device or a person who knowingly participates in the operation of an electrical and mechanical amusement device with a person under the age of 21 is guilty of a simple misdemeanor.

ITEM 4. Rescind rule 481—105.1(10A,99B) and adopt in lieu thereof the following **new** rule:

481—105.1(10A,99B) Definitions. The definitions in rule 481—104.1(10A,99B) are incorporated by reference in this chapter. In addition, the following definitions apply to the possession and use of registered amusement devices.

"Amusement device registration availability" means a registration position which becomes available when a distributor or owner is going out of business, fails to renew a registration within time frames established by the department, has an electrical and mechanical device seized by law enforcement and the seizure is upheld through a forfeiture hearing, or any other legal order has been issued which pertains to violations of Iowa Code chapter 99B, 123, or 123A. The maximum number of registration positions available is 6,928.

"Counting mechanism" means an appliance that tallies the volume of business of an individual amusement device, can

be read externally without moving or opening the cabinet of the amusement device, and cannot be reset.

"Distributes" means to deliver, to provide or to otherwise make available in Iowa amusement devices required to be registered in accordance with these rules.

"Distributor" means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person who owns electrical and mechanical amusement devices that are registered as provided in Iowa Code section 99B.10(4), and that are offered for use at more than a single location or premises.

"Manufacturer" means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person engaged in business in this state that originally produces an electrical and mechanical amusement device required to be registered under Iowa Code section 99B.10(4) or produces individual components for use in such a device.

"Manufacturer's representative" means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person engaged in business in this state that promotes or sells electrical and mechanical amusement devices required to be registered under Iowa Code section 99B.10(4) or promotes or sells individual components for use in such devices on behalf of a manufacturer of such devices or components.

"Operation" means that a registered amusement device is made available for use by the public or made available for use on the premises of a charitable organization.

"Organization" means an entity that meets the requirements of Iowa Code section 99B.7(1)"m."

"Owner" means, for the purposes of Iowa Code sections 99B.10A and 99B.10B, any person that owns an operable electrical and mechanical amusement device required to be registered under Iowa Code section 99B.10, subsection 4. An owner that operates for profit is allowed up to two machines at a single location. An owner that meets the requirements of Iowa Code section 99B.7(1)"m" is allowed up to four machines at a single location.

"Person" means a person as defined by Iowa Code section 4.1.

"Premises" means a location where one or more registered amusement devices are available for public use.

"Prize" means a ticket(s) or token(s) that is dispensed by a registered amusement device as an award for use and that is worth up to \$5 in merchandise.

"Registered amusement device" means an electrical and mechanical amusement device in operation subject to registration by the department pursuant to Iowa Code section 99B.10(4) and includes both the external and internal components. Any change in the registered amusement device, including the external and internal components of the registered amusement device, constitutes a new registered amusement device for which registration by the owner is required. The word "change" as used herein does not include repairs or replacement of parts that do not change or alter the operation of the device as originally registered by the owner. If the repairs or replacement parts alter the operation of the device as originally registered, then the device must be reregistered before it is made available for operation.

"Responsible party," as listed on the amusement device registration, means the owner of the amusement device(s).

"Security mechanism" means an appliance which prevents a person from operating an electrical and mechanical amusement device by not allowing the acceptance of money until action is taken by the owner or owner's designee to allow the person to operate the device.

ITEM 5. Rescind rule 481—105.2(99B) and adopt in lieu thereof the following **new** rule:

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

481—105.2(99B) Registered amusement device restrictions. Each registered amusement device shall be located on premises for which a Class “A,” Class “B,” Class “C,” or Class “D” liquor control license or a Class “B” or a Class “C” beer permit has been issued pursuant to Iowa Code chapter 123.

105.2(1) The number of electrical and mechanical amusement devices registered by the department shall not exceed 6,928, the total number of devices registered by the department as of the effective date of 2004 Iowa Acts, chapter 1118, April 28, 2004.

105.2(2) The department shall not initially register an electrical and mechanical amusement device that is required to be registered pursuant to Iowa Code section 99B.10(4) to an owner for a location for which only a Class “B” or a Class “C” beer permit has been issued pursuant to Iowa Code chapter 123 on or after the effective date of 2004 Iowa Acts, chapter 1118, April 28, 2004.

105.2(3) An owner at a location for which only a Class “B” or a Class “C” beer permit has been issued pursuant to Iowa Code chapter 123 shall not relocate an amusement device registered as provided in this chapter to a location other than the location of the device on the effective date of 2004 Iowa Acts, chapter 1118, April 28, 2004, and shall not transfer, assign, sell, or lease an amusement device as provided in this chapter to another person for which only a Class “B” or a Class “C” beer permit has been issued pursuant to Iowa Code chapter 123 after the effective date of 2004 Iowa Acts, chapter 1118, April 28, 2004.

EXAMPLE 1: An electrical and mechanical amusement device is registered with the department and is located at a convenience store that has a Class “C” beer permit.

1. If the amusement device needs to be repaired, the owner may repair it without losing the registration position or buying a new registration tag.

2. If the amusement device needs to be replaced because it is defective, it must be replaced with the same game in order to keep the registration position.

3. The amusement device cannot be moved from one location to another under a Class “B” or a Class “C” beer permit, even if the number of registered devices at a location does not change.

4. If a location with a Class “B” or a Class “C” beer permit had only one amusement device registered on April 28, 2004, the maximum number of devices allowed at that location shall be one.

105.2(4) On or after July 1, 2005, an owner of an electrical and mechanical amusement device located on a premises that does not have a Class “A,” Class “B,” Class “C,” or Class “D” liquor control license or a Class “B” or a Class “C” beer permit issued pursuant to Iowa Code chapter 123 shall not offer the amusement device for use by the public. However, the owner of an amusement device shall be permitted to sell the device to a distributor registered by the department or to a person authorized to offer the device to the public pursuant to Iowa Code section 99B.10(4) for which a Class “A,” Class “B,” Class “C,” or Class “D” liquor control license has been issued pursuant to Iowa Code chapter 123. The purchaser must obtain a new registration tag for the device by applying to the department for a registration availability. The purchaser may not place the device for use by the public until a registration tag is received for the device. The seller must notify the department within ten days of the change in ownership of the device and return the registration tag, if available, to the department.

105.2(5) By July 1, 2004, each electrical and mechanical amusement device at a location for which only a Class “B” or a Class “C” beer permit has been issued pursuant to Iowa Code chapter 123 shall include on the amusement device a security mechanism which prevents a person from operating the amusement device by not allowing the acceptance of money until the machine is activated by the owner or owner’s designee. A sign shall be posted stating that a person must be 21 years of age to operate the registered amusement device.

EXAMPLE 2: A patron in a convenience store tries to put money in an amusement device, but the amusement device will not take the money. The patron approaches the person working behind the counter, who then asks the patron for an ID. If the patron is 21 years of age or older, the amusement device is activated, thereby allowing the patron to play the amusement device. The owner or owner’s designee shall reactivate the security mechanism once the patron has finished playing the amusement device.

105.2(6) The registered amusement device shall be registered in accordance with these rules and shall comply with all of the requirements of Iowa Code section 99B.10 and rule 481—104.2(99B).

105.2(7) The registered amusement device shall not be designed or adapted to facilitate gambling.

105.2(8) If the department, or the department’s designee, determines that a registered amusement device is not in compliance with the requirements of this chapter or any other provision of Iowa law, the device may be subject to seizure, and any registration associated with the device, including the registration of the manufacturer, manufacturer’s representative, or the distributor, may be revoked.

105.2(9) A person owning or leasing an electrical and mechanical amusement device shall not advertise or promote the availability of the amusement device to the public as anything other than an electrical and mechanical amusement device. Situations that constitute advertising and promoting include, but are not limited to, posted signs, newspaper/magazine advertisements, radio and television ads, word of mouth and Internet posting.

105.2(10) A person who is interested in being included on a waiting list for an amusement device registration position may obtain an application form by telephone at (515)242-5264. A registration position request shall be processed by the department in the same order in which the application is received. Each person shall have no more than one registration position request on the waiting list at one time. After receipt of an amusement device registration position from the waiting list, the person may make an additional request for a registration position. If the person does not pay the appropriate registration fees within ten calendar days of the notification of registration availability, the person shall forfeit the position to the next applicant on the waiting list, and the person’s name shall be moved to the bottom of the waiting list.

105.2(11) A new amusement device registration shall only be allowed at a location that has a Class “A,” Class “B,” Class “C,” or Class “D” liquor control license issued pursuant to Iowa Code chapter 123.

EXAMPLE 3: An amusement device is located in a bar that has the appropriate liquor license. On April 28, 2004, this location had only one amusement device. An additional amusement device may be added to this location.

1. If the amusement device needs to be repaired, it may be repaired without the loss of the device’s registration position.

2. If the amusement device is defective and needs to be replaced, it can be replaced with the same game under the

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

original registration without the incurring of additional charges.

3. If the amusement device is replaced with a new amusement device that has a different game, a new registration tag shall be purchased from the department.

105.2(12) If a person purchases an amusement device that is registered with the department, the registration tag, if available, must be removed from the purchased amusement device and returned to the department. The department shall be notified in writing within ten calendar days of the change in ownership of any amusement device. The purchased device shall be removed from the inventory of the original owner, thus creating a registration position on the waiting list. The purchaser must apply for a registration position on the waiting list for the device.

105.2(13) An amusement device that is registered with the department and located in a warehouse may be placed in a location that has a Class "A," Class "B," Class "C," or Class "D" liquor license issued pursuant to Iowa Code chapter 123. Such a device may also be used as a replacement device.

105.2(14) The registration application for all new amusement devices must be accompanied by the receipt, invoice, or bill of sale containing the seller's name, company name, and address, and transaction date.

ITEM 6. Amend rule **481—105.3(99B)**, numbered paragraph "3," as follows:

3. Any registered amusement device that does not conform to the requirements in these rules or Iowa Code chapter 99B as amended by 2003 Iowa Acts, chapter 147.

ITEM 7. Rescind rule 481—105.5(99B) and adopt in lieu thereof the following **new** rule:

481—105.5(99B) Registration by a manufacturer, manufacturer's representative, distributor, or an owner that operates for profit. A person engaged in business in Iowa as a manufacturer, a manufacturer's representative, a distributor, or an owner that operates for profit shall be registered with the department prior to engaging in business in Iowa. A person shall register under each of the categories that apply to the business to be conducted in Iowa and shall pay the designated fee for each category of registration.

105.5(1) Each person that registers with the department shall pay an annual registration fee as follows:

a. For a manufacturer or manufacturer's representative, \$2,500, effective upon renewal.

b. For a distributor, \$5,000, effective upon renewal.

c. For an owner of no more than two electrical and mechanical amusement devices registered as provided in Iowa Code section 99B.10(4) at a single location or premises that is not an organization that meets the requirements of Iowa Code section 99B.7(1)"m," \$2,500. The registration fee shall be effective immediately.

105.5(2) Registration forms are available from the Department of Inspections and Appeals, Amusement Devices, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083, or by telephone at (515)242-5462.

105.5(3) If registration information changes, the person shall notify the department in writing of the changes within ten calendar days.

105.5(4) Registration fees are nonrefundable.

ITEM 8. Rescind rule 481—105.6(99B) and adopt in lieu thereof the following **new** rule:

481—105.6(99B) Registration of registered amusement devices. Each owner of an amusement device subject to reg-

istration by the department pursuant to Iowa Code section 99B.10(4) shall obtain a registration. A registration issued pursuant to Iowa Code chapter 99B is required to offer a registered amusement device for use.

105.6(1) Each owner of an amusement device subject to the registration requirements imposed by this chapter shall register the device before it is made available for operation.

105.6(2) In the event a registration position is not open, the distributor's or owner's name may be placed on the department's waiting list. The distributor or owner will be notified by the department when a position is available and the distributor's name or owner's name reaches the top of the waiting list. Upon the distributor's or owner's completion of the application form and payment of the required fee, the department shall issue a registration tag valid for one year from the date of issuance.

a. Application forms are available from the Department of Inspections and Appeals, Amusement Devices, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083. The application form shall contain all information required by the department.

b. Prior to placement of the amusement device for public use, the registration tag shall be prominently displayed on the front of the registered amusement device in such a manner as to be clearly visible to the general public.

c. Any changes to the information provided on the application, including but not limited to changes in ownership, registered amusement device location, and the cessation of business in this state, shall be reported to the department in writing or electronically within ten calendar days of the occurrence of any of the above events.

d. Registration fees are nonrefundable.

105.6(3) A registered amusement device must be obtained from a manufacturer, a manufacturer's representative or a distributor that is registered with the department pursuant to Iowa Code section 99B.10A. For new machines, proof of purchase, which includes the seller's name, company name, and address, must accompany the application for registration of the machine.

The owner of the registered amusement device shall exercise due diligence in ensuring that the amusement device is in compliance with these rules and all laws governing such devices. Upon request by the department or the department's designee, any manufacturer, manufacturer's representative or distributor registered with the department, or any owner of a registered device, shall permit the inspection of any amusement device and shall make available for inspection all records, documents, and agreements pertaining to the amusement device.

105.6(4) An organization that meets the requirements of Iowa Code section 99B.7(1)"m" shall not permit or offer for use more than four registered amusement devices at any single premises. All other persons shall not permit or offer for use more than two registered amusement devices at any single premises. The single premises where the registered amusement device(s) is located shall have a Class "A," Class "B," Class "C," or Class "D" liquor control license or a Class "B" or a Class "C" beer permit issued pursuant to Iowa Code chapter 123.

105.6(5) Each electrical and mechanical amusement device required to be registered pursuant to Iowa Code section 99B.10 shall, by January 1, 2006, include on the amusement device a counting mechanism.

a. The department of inspections and appeals and the department of public safety shall upon request have access to the information provided by the counting mechanism.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

b. The counting mechanism shall be installed so that the reading on the counting mechanism is visible from the outside of the machine. If the device is equipped with an on-screen readout, the switch to activate the readout must be accessible from the outside of the amusement device. The counting mechanism must not be able to be reset.

105.6(6) Each electrical and mechanical device required to be registered pursuant to Iowa Code section 99B.10 at a location for which only a Class "B" or a Class "C" beer permit has been issued pursuant to Iowa Code chapter 123 shall include on the device a security mechanism that prevents the device from being operated by a person until action is taken by the owner or owner's designee to allow the person to operate the device.

ITEM 9. Amend rule 481—105.7(99B), introductory paragraph, as follows:

481—105.7(99B) Violations. Failure to comply with the limitations imposed on the use and possession of registered amusement devices in Iowa Code chapter 99B ~~as amended by 2003 Iowa Acts, chapter 147,~~ may result in the following:

ITEM 10. Amend rule **481—105.7(99B)**, numbered paragraphs "6" and "8," as follows:

6. A registration may be revoked if the registrant or agent of the registrant violates or permits a violation of Iowa Code chapter 99B ~~as amended by 2003 Iowa Acts, chapter 147.~~

8. A registration may be revoked if the registrant or an agent of the registrant engages in any act or omission that would have permitted the department to refuse to issue a registration under Iowa Code chapter 99B ~~as amended by 2003 Iowa Acts, chapter 147.~~

ITEM 11. Amend rule **481—105.7(99B)** by adding the following **new** numbered paragraphs:

10. A person under the age of 21 shall not participate in the operation of an electrical and mechanical amusement device. A person who violates the provisions of Iowa Code section 99B.10C(1) commits a scheduled violation under Iowa Code section 805.8C(4).

11. A person owning or leasing an electrical and mechanical amusement device who knowingly allows a person under the age of 21 to participate in the operation of an electrical and mechanical amusement device or a person who knowingly participates in the operation of an electrical and mechanical amusement device with a person under the age of 21 is guilty of a simple misdemeanor.

ITEM 12. Amend 481—Chapter 105 by adding the following **new** rules:

481—105.9(10A,99B) Revocation of registration.

105.9(1) The department may revoke for cause any registration issued pursuant to Iowa Code chapter 99B following at least ten days' written notice and opportunity for an evidentiary hearing pursuant to rule 105.8(10A,99B).

105.9(2) If a person awards a cash prize in violation of Iowa Code chapter 99B, the department shall revoke a registration issued pursuant to Iowa Code chapter 99B for a period of ten years following at least ten days' written notice and opportunity for an evidentiary hearing pursuant to rule 105.8(10A,99B).

a. A person whose registration is revoked under the provisions of Iowa Code chapter 99B and for whom a Class "A," Class "B," Class "C," or Class "D" liquor control license has been issued pursuant to Iowa Code chapter 123 shall have the person's liquor control license suspended for a period of 14

days in the same manner as provided in Iowa Code section 123.50(3)"a."

b. A person whose registration is revoked under the provisions of Iowa Code chapter 99B and for whom only a Class "B" or a Class "C" beer permit has been issued pursuant to Iowa Code chapter 123 shall have the person's Class "B" or Class "C" beer permit suspended and that person's sales tax permit suspended for a period of 14 days in the same manner as provided in Iowa Code section 123.50(3)"a."

105.9(3) Any person under the age of 21 who operates an electrical and mechanical amusement device subject to registration by the department shall be fined \$250 pursuant to Iowa Code section 805.8C(4).

481—105.10(80GA,ch147) Reports. Each distributor, owner, or qualified organization that owns electrical and mechanical amusement devices shall submit a report of all monetary activity by location and a cumulative total for all locations for each calendar quarter.

105.10(1) Quarterly report forms are available from the Department of Inspections and Appeals, Amusement Devices, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083. The quarterly report form shall contain all information required by the department of inspections and appeals and the department of revenue.

105.10(2) Distributors, owners, and qualified organizations may also complete the quarterly report form electronically at the following Web site: <https://www.egov.state.ia.us/gmms/>.

a. The first quarter is from January 1 to March 31;

b. The second quarter is from April 1 to June 30;

c. The third quarter is from July 1 to September 30;

d. The fourth quarter is from October 1 to December 31.

105.10(3) Quarterly reports completed on forms provided by the department are due 30 calendar days after the end of the quarter. When the due date falls on Saturday, Sunday or a legal holiday, the report is due on the next business day. A copy of the accounting records is to accompany the report or, if the report is transmitted electronically, the accounting records may be mailed separately to Department of Inspections and Appeals, Amusement Devices, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083, or faxed to (515)281-3291. The records should include the name and the address of the distributor, owner, or qualified organization and any other identifying information.

ITEM 13. Amend the implementation clause at the end of **481—Chapter 105** as follows:

These rules are intended to implement Iowa Code chapter 99B ~~and 2003 Iowa Acts, chapter 147 as amended by 2004 Iowa Acts, chapter 1118.~~

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MEDICAL EXAMINERS BOARD[653]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3 and chapter 148, the Board of Medical Examin-

MEDICAL EXAMINERS BOARD[653](cont'd)

ers hereby gives Notice of Intended Action to amend Chapter 9, "Permanent Physician Licensure," and Chapter 10, "Resident, Special and Temporary Physician Licensure," Iowa Administrative Code.

The Board approved the proposed amendments to Chapters 9 and 10 during a regularly scheduled meeting on April 7, 2005.

The Board is updating and clarifying licensure procedures for permanent, resident, special and temporary licenses. "Incidentally called into this state in consultation with a physician and surgeon licensed in this state" is further defined to require that, when an Iowa-licensed physician requests that a physician licensed in another U.S. jurisdiction come to Iowa to provide advice or instruction, the Iowa-licensed physician retains the primary responsibility for management of patients' care. Physicians and surgeons who hold a current, active license in good standing in another U.S. jurisdiction will not be required to have Iowa licensure when they come to Iowa for continuing medical education when an Iowa-licensed physician retains primary responsibility for management of patients' care.

Applicants will no longer be required to submit a photograph for verification by the applicant's medical school. Applicants will be required to submit a transcript from all medical schools attended. An amendment establishes prorating of fees, where applicable, for license renewal and a convenience fee for on-line renewal, as both are already enacted in Chapter 8. The date when a license expires is clarified for on-line renewals to be the last day of the month in the month after the expiration date on the license. An applicant will be required to identify whether the applicant has been subject to any action from any professional regulatory board, in addition to a medical board. Copies of the legal documents may be requested if needed during the review process, rather than requiring applicants to submit all documents routinely.

A process is established for denying a license, which begins with a preliminary decision and includes an appeal process before the Board makes a final decision. Procedures are established that allow staff to grant licensure to special licensure applicants under certain circumstances and for the licensure committee to decide on the application if other circumstances exist. Action that may be taken against a licensee who practices in Iowa with an inactive license has been expanded beyond just Board action to include injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, or other available legal remedies. A resident in training in Iowa who has previously held a permanent license in Iowa or the equivalent in any U.S. jurisdiction will be required to hold an active permanent Iowa license rather than an Iowa resident license.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on May 31, 2005. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or by E-mail to ann.mowery@iowa.gov.

There will be a public hearing on May 31, 2005, at 10 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code sections 148.3, 148.5, 148.9, 148.10 and 148.11.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)

281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend the following definition in rule **653—9.1(147,148,150,150A)**:

"Incidentally called into this state in consultation with a physician and surgeon licensed in this state" as set forth in Iowa Code section 148.2(5) means a physician licensed in another United States jurisdiction who acts in an advisory or instructional capacity to a physician with a permanent or special medical license in Iowa, for a period of not more than 10 consecutive days and not more than 20 total days in any calendar year. Any portion of a day counts as one day. The consulting physician shall be involved in the care of patients in Iowa only at the request of the Iowa physician requesting the consultation. The *Iowa-licensed* physician requesting the consultation shall retain the primary responsibility for management of patients' care.

ITEM 2. Amend subrule **9.2(2)** by relettering paragraphs "**d**" and "**e**" as "**e**" and "**f**" and adopting **new** paragraph "**d**" as follows:

d. Physicians and surgeons who hold a current, active license in good standing in another United States jurisdiction and who come to Iowa to participate in continuing medical education may participate in patient care under the request of the Iowa-licensed physician in charge of the continuing education program. The Iowa-licensed physician shall retain the primary responsibility for management of patients' care.

ITEM 3. Amend subrule **9.5(2)** as follows:

Amend paragraph "**g**" as follows:

g. A sworn statement from an official of the educational institution certifying the date the applicant received the medical degree, ~~verifying that the applicant's photograph is that of the graduate named on the application,~~ and acknowledging what, if any, derogatory comments exist in the institution's record about the applicant. If a sworn statement from an official of the educational institution cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution.

Reletter paragraphs "**h**" to "**o**" as "**i**" to "**p**" and adopt **new** paragraph "**h**" as follows:

h. An official transcript, or its equivalent, received directly from the school for every medical school attended. A complete translation of any transcript not written in English shall be submitted. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

Amend relettered paragraphs "**i**" and "**n**" as follows:

i. A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, training or research program, or health facility in any jurisdiction.

n. A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. ~~A copy of the allegations is required. If the case is resolved, a copy of the final disposition, including any settlement agreement, is required. Copies of the legal documents may be requested if needed during the review process.~~

ITEM 4. Amend subrule **9.11(3)**, paragraph "**a**," as follows:

MEDICAL EXAMINERS BOARD[653](cont'd)

a. The renewal fee is \$425 if the renewal is made via paper application or \$312.50 if the renewal is made via on-line application, *per biennial period or prorated for a part thereof if the current license was issued for a period of less than 24 months. A convenience fee will be charged for on-line renewal.*

ITEM 5. Amend subrule 9.11(6) as follows:

9.11(6) Failure to renew. Failure of the licensee to renew a license within two months following its expiration date shall cause the license to become inactive and invalid. A licensee whose license is invalid is prohibited from practice until the license is reinstated in accordance with rule 9.13(147,148,150,150A).

a. In order to ensure that the license will not become inactive when a paper renewal form is used, the completed renewal application and appropriate fees must be received in the board office by the fifteenth of the month prior to the month the license becomes inactive. For example, a licensee whose license expires on January 1 has until March 1 to renew the license or the license becomes inactive and invalid. The licensee must submit and the board office must receive the renewal materials prior to or on February 15 to ensure that the license will be renewed prior to becoming inactive and invalid on March 1.

b. *In order to ensure that the license will not become inactive when on-line renewal is used, the licensee must complete the on-line renewal prior to midnight of the last day of the month in the month after the expiration date on the license. For example, a licensee whose license expiration date is January 1 must complete the on-line license renewal before midnight on the last day of February; the license becomes inactive and invalid at 12:01 a.m. on March 1.*

ITEM 6. Amend paragraph **9.12(1)“c”** as follows:

c. A physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice medicine under an Iowa license until the license is reinstated to current, active status. ~~The board may take action against a physician who practices with an inactive license as outlined in 653—Chapters 12 and 13. A licensee who practices in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, or other available legal remedies.~~

ITEM 7. Amend subparagraphs **9.13(2)“a”(5)** and **(7)** as follows:

(5) A statement disclosing and explaining any warnings issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, training or research program, or health facility in any jurisdiction;

(7) A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. ~~A copy of the allegations is required. If the case is resolved, a copy of the final disposition, including any settlement agreement, is required. Copies of the legal documents may be requested if needed during the review process; and~~

ITEM 8. Rescind rule 653—9.15(147,148,150,150A) and adopt the following **new** rule in lieu thereof:

653—9.15(147,148,150,150A) Denial of licensure.

9.15(1) Preliminary notice of denial. Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that shall be sent to the applicant by regular first-class mail at the address provided by the applicant. The

preliminary notice of denial shall be in writing, cite the factual and legal basis for denying the application, notify the applicant of the time for appeal, and specify the date upon which the denial will become final if it is not appealed.

9.15(2) Appeal procedure. An applicant who has received a preliminary notice of denial may appeal the denial and request a hearing on the issues related to the preliminary notice of denial by serving a request for hearing upon the executive director not more than 30 calendar days following the date when the preliminary notice of denial was mailed. The applicant's current address shall be provided in the request for hearing. The request is deemed filed on the date it is received in the board office. If the request is received with a USPS nonmetered postmark, the board shall consider the postmark date as the date the request is filed. The request shall specify the factual or legal errors and that the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure.

9.15(3) Hearing. If an applicant appeals the preliminary notice of denial and requests a hearing, the hearing shall be a contested case and subsequent proceedings shall be conducted in accordance with 653—Chapter 12.

a. License denial hearings are contested cases open to the public.

b. Either party may request issuance of a protective order in the event privileged or confidential information is submitted into evidence.

c. Evidence supporting the denial of the license may be presented by an assistant attorney general.

d. While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

e. The board, after a hearing on license denial, may grant or deny the application for licensure. The board shall state the reasons for its decision and may grant the license, grant the license with restrictions or deny the license. The final decision is a public record.

f. Judicial review of a final order of the board denying licensure, or issuing a license with restrictions, may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of any agency's final decision in a contested case.

9.15(4) Finality. If an applicant does not appeal a preliminary notice of denial in accordance with 9.15(2), the preliminary notice of denial automatically becomes final. A final denial of an application for licensure is a public record.

9.15(5) Failure to pursue appeal. If an applicant appeals a preliminary notice of denial in accordance with 9.15(2), but the applicant fails to pursue that appeal to a final decision within one year from the date of the preliminary notice of denial, the board may dismiss the appeal. The appeal may be dismissed only after the board sends a written notice by first-class mail to the applicant at the applicant's last-known address. The notice shall state that the appeal will be dismissed and the preliminary notice of denial will become final if the applicant does not contact the board to schedule the appeal hearing within 30 days of the date the letter is mailed from the board office. Upon dismissal of an appeal, the preliminary notice of denial becomes final. A final denial of an application for licensure under this rule is a public record.

ITEM 9. Amend paragraph **10.3(1)“b”** as follows:

b. An Iowa resident physician license or an Iowa permanent physician license is required of any resident physician practicing in Iowa. *A physician in a resident training program who has previously held a permanent license in Iowa or*

MEDICAL EXAMINERS BOARD[653](cont'd)

the equivalent in any United States jurisdiction shall be required to have an active permanent physician license in Iowa.

ITEM 10. Amend subrule **10.3(2)** by adding **new** paragraph **"d"** as follows:

d. Not have held a permanent license in Iowa or an equivalent license in any United States jurisdiction.

ITEM 11. Amend subparagraphs **10.3(3)"b"(7)** and **(9)** as follows:

(7) A statement disclosing and explaining any warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical *or professional* regulatory authority, an educational institution, training or research program, or health care facility in any jurisdiction;

(9) A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. ~~A copy of the allegations is required. If the case is resolved, a copy of the final disposition, including any settlement agreement, is required~~ *Copies of the legal documents may be requested if needed during the review process;* and

ITEM 12. Amend subparagraphs **10.4(3)"b"(5), (6) and (8)** as follows:

(5) A photocopy of the applicant's medical degree issued by an educational institution and a sworn statement from an official of the educational institution certifying the date the applicant received the medical degree, ~~verifying that the applicant's photograph is that of the graduate named on the application,~~ and acknowledging what, if any, derogatory comments exist in the institution's record about the applicant. A complete translation of any diploma not written in English shall be submitted;

(6) A statement disclosing and explaining any warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical *or professional* regulatory authority, an educational institution, training or research program, or health facility in any jurisdiction;

(8) A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. ~~A copy of the allegations is required. If the case is resolved, a copy of the final disposition, including any settlement agreement, is required~~ *Copies of the legal documents may be requested if needed during the review process;* and

ITEM 13. Amend paragraph **10.4(4)"c"** as follows:

c. ~~After final review, staff shall submit the application to the committee for review. If the final review indicates no questions or concerns regarding the applicant's qualifications for licensure, staff may administratively grant a special license.~~

ITEM 14. Amend subrule **10.4(4)** by relettering paragraphs **"d"** to **"f"** as **"f"** to **"h"** and adding **new** paragraphs **"d"** and **"e"** as follows:

d. If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, director of licensure and administration, and director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

(1) If there is no current concern, staff shall administratively grant a special license.

(2) If any concern exists, the application shall be referred to the committee.

e. Staff shall refer to the committee for review matters which include, but are not limited to, falsification of information on the application, criminal record, substance abuse, questionable competency, physical or mental illness, or educational disciplinary history.

ITEM 15. Amend subparagraphs **10.5(1)"d"(5)** and **(7)** as follows:

(5) A statement disclosing and explaining any warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical *or professional* regulatory authority, an educational institution, training or research program, or health facility in any jurisdiction;

(7) A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. ~~A copy of the allegations is required. If the case is resolved, a copy of the final disposition, including any settlement agreement, is required~~ *Copies of the legal documents may be requested if needed during the review process;*

ITEM 16. Amend subparagraphs **10.5(2)"d"(5)** and **(7)** as follows:

(5) A statement disclosing and explaining any warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical *or professional* regulatory authority, an educational institution, training or research program, or health facility in any jurisdiction;

(7) A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. ~~A copy of the allegations is required. If the case is resolved, a copy of the final disposition, including any settlement agreement, is required~~ *Copies of the legal documents may be requested if needed during the review process;*

ARC 4163B

NATURAL RESOURCE
COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 51, "Game Management Areas," Iowa Administrative Code.

Chapter 51 gives the regulations for the use of game management areas. These amendments will update the name of the shooting range area from "Banner Pits" to "Banner Lakes at Summerset State Park" to reflect the recent renovation, development, and renaming of the area. In addition, new subrule 51.3(2) will close four wildlife management areas to target shooting. Each of the four wildlife areas will remain open to hunting.

Any interested person may make written suggestions or comments on the proposed amendments on or before May 31, 2005. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-

NATURAL RESOURCE COMMISSION[571](cont'd)

0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing at 10 a.m. on June 1, 2005, in the Fourth Floor West Conference Room, Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 481A.6, 481A.38, 481A.39, and 481A.48.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **51.3(1)**, paragraph "**j**," as follows:

j. All requirements listed in this subrule shall apply to the following shooting ranges:

(1) Banner Mine Area Summerset State Park - Warren County.

(2) to (9) No change.

ITEM 2. Amend rule 571—51.3(481A) by adopting the following **new** subrule:

51.3(2) Target shooting is prohibited on the following areas:

- a. Folsom Lake - Mills County.
- b. Keg Lake - Mills County.
- c. Bartlett Access - Fremont County.
- d. Banner Flats - Warren County.

ARC 4153B

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 124.301, 124B.11, and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 2, “Pharmacist Licenses,” Chapter 3, “Pharmacy Technicians,” Chapter 8, “Universal Practice Standards,” Chapter 10, “Controlled Substances,” Chapter 12, “Precursor Substances,” and Chapter 17, “Wholesale Drug Licenses,” Iowa Administrative Code.

The amendments were approved at the April 20, 2005, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments increase fees related to the issuance of new and renewed pharmacist licenses processed

between July 1, 2005, and June 30, 2006, including examination, reexamination, and license transfer processing fees. The amendments also propose increasing fees related to the issuance of new and renewed pharmacy and wholesale drug licenses, new and renewed pharmacy technician and controlled substances registrations, and new and renewed precursor substances permits processed between July 1, 2005, and June 30, 2006.

Requests for waiver or variance of the discretionary provisions of these amendments will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on May 31, 2005. Such written materials should be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 124.301, 124B.11, 147.94, 155A.6, 155A.11, 155A.13, 155A.13A, 155A.14, and 155A.17.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 2.3(1) as follows:

2.3(1) Fees to the board. The biennial license fee shall be the fee established by rule 2.11(147,155A), including surcharge. The processing fee shall be \$40. For the period beginning July 1, 2004 2005, and ending June 30, 2005 2006, the processing fee shall be \$80. No refunds of the processing fee shall be made for cancellation or withdrawal of applications. The license fee and processing fee shall be payable to the Iowa Board of Pharmacy Examiners and may be remitted in the form of personal check, money order, or certified check. No refund of fees shall be made for failure to complete all licensure requirements within the period specified in subrule 2.1(2).

ITEM 2. Amend rule **657—2.6(147)**, first unnumbered paragraph, as follows:

Each applicant for reexamination shall file an application on forms provided by the board. Processing fees of \$30 each will be charged to take NAPLEX or MPJE, Iowa Edition, and shall be paid to the board as provided in subrule 2.3(1). For the period beginning July 1, 2004 2005, and ending June 30, 2005 2006, the processing fee shall be \$40 each. In addition, candidates will be required to complete the appropriate examination registration application as provided in rule 2.2(155A) and to pay to NABP the registration and administration fees for each examination as provided in subrule 2.3(2). All applications, registration forms, and fees shall be submitted as provided in subrules 2.3(2) and 2.3(3).

ITEM 3. Amend subrule 2.9(4) as follows:

2.9(4) Fees. The fee for license transfer shall consist of the biennial license fee established by rule 2.11(147,155A) including surcharge and a processing fee of \$50. For the period beginning July 1, 2004 2005, and ending June 30, 2005 2006, the processing fee shall be \$100. No refunds of the processing fee shall be made for cancellation or withdrawal of an application. The license fee and processing fee shall be payable to the Iowa Board of Pharmacy Examiners and may be remitted in the form of personal check, money order, or certified check.

PHARMACY EXAMINERS BOARD[657](cont'd)

ITEM 4. Amend rule 657—2.11(147,155A), introductory paragraph, as follows:

657—2.11(147,155A) License expiration and renewal. A license to practice pharmacy shall expire on the second thirtieth day of June following the date of issuance of the license, except a new pharmacist license issued between April 1 and June 29, which license shall expire on the third thirtieth day of June following the date of issuance. The license renewal certificate shall be issued upon completion of the renewal application and timely payment of a \$100 fee plus applicable surcharge pursuant to 657—30.8(155A). For the period beginning July 1, 2004 2005, and ending June 30, 2005 2006, the license renewal certificate shall be issued upon completion of the renewal application and timely payment of a \$200 fee plus applicable surcharge pursuant to 657—30.8(155A).

ITEM 5. Amend subrule 3.10(1) as follows:

3.10(1) Initial fee. The fee for obtaining an initial registration shall be \$30 plus applicable surcharge pursuant to 657—30.8(155A). For the period beginning July 1, 2004 2005, and ending June 30, 2005 2006, the fee for initial registration shall be \$40 plus applicable surcharge pursuant to 657—30.8(155A).

ITEM 6. Amend subrule 3.10(2) as follows:

3.10(2) Renewal fee. The renewal fee for obtaining a biennial registration shall be \$30 plus applicable surcharge pursuant to 657—30.8(155A). For the period beginning July 1, 2004 2005, and ending June 30, 2005 2006, the fee for biennial registration shall be \$40 plus applicable surcharge pursuant to 657—30.8(155A).

ITEM 7. Amend subrule 8.35(4), introductory paragraph, as follows:

8.35(4) License expiration and renewal. General pharmacy licenses, hospital pharmacy licenses, special or limited use pharmacy licenses, and nonresident pharmacy licenses shall be renewed before January 1 of each year. The fee for a new or renewal license shall be \$100. For the period beginning July 1, 2004 2005, and ending June 30, 2005 2006, the fee for a new or renewal license shall be \$150.

ITEM 8. Amend rule 657—10.3(124), introductory paragraph, as follows:

657—10.3(124) Registration and renewal. For each registration or timely renewal of a registration to manufacture, distribute, dispense, prescribe, import or export, conduct research or instructional activities, or conduct chemical analysis with controlled substances listed in Schedules I through V of Iowa Code chapter 124, registrants shall pay a biennial fee of \$50. For the period beginning July 1, 2004 2005, and ending June 30, 2005 2006, the fee for registration or timely renewal of a biennial registration shall be \$100.

ITEM 9. Amend subrule 10.11(2), paragraph “b,” as follows:

b. Pharmacy, hospital, care facility, manufacturer, distributor, importer, or exporter. An entity registered under these classifications shall apply to change the address of the registered location by submitting a completed application for registration. Applications may be obtained and shall be submitted as provided in rule 657—10.2(124). *A The registration fee of \$50 as provided in rule 10.3(124) shall accompany each completed application.*

ITEM 10. Amend subrule 10.11(3), paragraph “b,” as follows:

b. Pharmacy, hospital, care facility, manufacturer, distributor, importer, or exporter. An entity registered under

these classifications shall apply to change the registrant name by submitting a completed application for registration. Applications may be obtained and shall be submitted as provided in rule 657—10.2(124). *A The registration fee of \$50 as provided in rule 10.3(124) shall accompany each completed application.*

ITEM 11. Amend subrule 10.11(4) as follows:

10.11(4) Change of ownership of registered business entity. A change of immediate ownership of a pharmacy, hospital, care facility, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall require the completion of an application for registration. Applications may be obtained and shall be submitted as provided in rule 657—10.2(124). *A The registration fee of \$50 as provided in rule 10.3(124) shall accompany each completed application.*

ITEM 12. Amend subrule 12.7(2), paragraph “a,” as follows:

a. Initial and renewal fees. For each initial permit or timely renewed permit, an applicant shall pay a fee of \$100. For the period beginning July 1, 2004 2005, and ending June 30, 2005 2006, the fee for each initial permit or timely renewed permit shall be \$200.

ITEM 13. Amend subrule 17.3(2), introductory paragraph, as follows:

17.3(2) License expiration and renewal. A wholesale drug license shall be renewed before January 1 of each year. The fee for a new or renewal license shall be \$100. For the period beginning July 1, 2004 2005, and ending June 30, 2005 2006, the fee for a new or renewal license shall be \$300.

ITEM 14. Amend subrule 17.3(4), paragraph “b,” as follows:

b. Name or location change. When a licensed drug wholesaler changes its name or location, a new wholesale drug license application with a \$100 license fee *as provided in 17.3(2)* shall be submitted to the board office. Upon receipt of the fee and properly completed application, the board will issue a new license certificate. The old license certificate shall be returned to the board office within ten days of the change of name or location. A change of wholesaler location within Iowa, if the new location was not a licensed drug wholesaler immediately prior to the relocation, shall require an on-site inspection of the new location as provided in subrule 17.3(3).

ARC 4141B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 180, “Licensure of Optometrists,” Chapter 181, “Continuing Education for Optometrists,” and Chapter 184, “Fees,” Iowa Administrative Code.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These proposed amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Any interested person may make written comments on the proposed amendments no later than June 2, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on June 2, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—180.1(154)** as follows:

Rescind the definition of "lapsed license."

Adopt the following **new** definitions in alphabetical order: "Active license" means a license that is current and has not expired.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Reactivate" or "reactivation" means the process as outlined in rule 180.11(17A,147,272C) by which an inactive license is restored to active status.

"Reinstatement" means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

Amend the following definitions:

"Approved program or activity" means a continuing education program or activity meeting the standards set forth in these rules ~~which has received advance approval by the board pursuant to these rules.~~

"Licensure by endorsement" means the issuance of an Iowa license to practice optometry to an applicant who is ~~currently or has been~~ licensed in another state.

"Therapeutically certified optometrist" means an optometrist who is licensed to practice optometry in Iowa and who is certified by the board of optometry examiners to use diagnostic and therapeutic pharmaceutical agents for the purpose of diagnosis and treatment of the conditions of the human eye and adnexa, ~~excluding the use of oral Imuran or oral Methotrexate, and who may remove superficial foreign bodies from~~

~~the human eye and adnexa with the exclusions cited in Iowa Code chapter 154.~~

ITEM 2. Amend subrule **180.3(3)** by rescinding paragraph "**i**" and adopting in lieu thereof the following **new** paragraph "**i**":

i. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

ITEM 3. Rescind subrule 180.5(1) and adopt in lieu thereof the following **new** subrule:

180.5(1) The biennial license renewal period for a license to practice optometry shall begin on July 1 of an even-numbered year and end on June 30 two years later. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

ITEM 4. Rescind subrule 180.5(3) and adopt in lieu thereof the following **new** subrule:

180.5(3) A licensee seeking renewal shall:

- a. Meet the continuing education requirements of rule 645—181.2(154) and the mandatory reporting requirements of subrule 180.5(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and
- b. Submit the completed renewal application and renewal fee before the license expiration date.

ITEM 5. Rescind subrule 180.5(5) and adopt in lieu thereof the following **new** subrule:

180.5(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

ITEM 6. Amend subrule 180.5(7) as follows:

180.5(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 184.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration ~~date on the wallet card~~ *the grace period*.

ITEM 7. Adopt **new** subrule 180.5(8) as follows:

180.5(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as an optometrist in Iowa until the license is reactivated. A licensee who practices as an optometrist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

ITEM 8. Rescind and reserve rules **645—180.6(272C)** and **645—180.7(272C)**.

ITEM 9. Rescind rule 645—180.10(17A,147,272C) and adopt in lieu thereof the following **new** rule:

645—180.10(17A,147,272C) License denial.

180.10(1) When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

180.10(2) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing.

180.10(3) If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

ITEM 10. Adopt the following **new** rules:

645—180.11(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

180.11(1) Submit a reactivation application on a form provided by the board.

180.11(2) Pay the reactivation fee that is due as specified in 645—Chapter 184.

180.11(3) Provide verification of current competence to practice as an optometrist by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 30 hours of continuing education for a diagnostically certified optometrist or 50 hours for a therapeutically certified optometrist within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
 2. Date of initial licensure;
 3. Current licensure status; and
 4. Any disciplinary action taken against the license; and
- (2) Verification of completion of 60 hours of continuing education for a diagnostically certified optometrist or 100 hours for a therapeutically certified optometrist within two years of application for reactivation.

645—180.12(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 180.11(17A,147,272C) prior to practicing as an optometrist in this state.

ITEM 11. Amend rule **645—181.1(154)** as follows:

Rescind the definitions of "administrator," "approved sponsor," and "lapsed license."

Adopt the following **new** definition in alphabetical order: "Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

Amend the following definitions:

"Active license" means ~~the a license of a person who is acting, practicing, functioning, and working in compliance with license requirements that is current and has not expired.~~

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, ~~which has received advance approval by the board pursuant to these rules.~~

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period ~~or the selection of providers for verification of adherence to continuing provider requirements during a specified time period.~~

"Hour of continuing education" means ~~a clock hour at least 50 minutes~~ spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means ~~the license of a person who is not engaged in practice in the state of Iowa, a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.~~

ITEM 12. Amend subrules 181.2(3) and 181.2(4) as follows:

181.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be ~~approved by the board or otherwise meet the requirements herein and be approved by the board pursuant to statutory provisions and the rules that implement them in accordance with these rules.~~

181.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for second renewal. *A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.*

ITEM 13. Amend rule 645—181.3(154), catchwords, as follows:

645—181.3(154,272C) Standards for approval.

ITEM 14. Amend subrule 181.3(1), introductory paragraph and paragraph "c," as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

181.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. ~~The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The~~ *At the time of audit, the board may request the qualifications of presenters;*

ITEM 15. Amend subrule **181.3(1)**, paragraph “e,” subparagraphs (2) and (3), as follows:

(2) Numbers of program contact hours ~~(One contact hour usually equals one hour of continuing education credit.); and~~

(3) ~~Official signature or verification by program sponsor~~ *Certificate of completion or evidence of successful completion of the course provided by the course sponsor.*

ITEM 16. Rescind rule 645—181.4(154) and adopt the following **new** rule in lieu thereof:

645—181.4(154,272C) Audit of continuing education report. After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

181.4(1) The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

181.4(2) The licensee shall provide the following information to the board for auditing purposes:

a. Date and location of course, course title, course description, course schedule, names and qualifications of instructors/speakers and method of presentation; or a program brochure which includes all the information required in this paragraph;

b. Number of contact hours for program attended; and

c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

181.4(3) For auditing purposes, all licensees must retain the information identified in subrule 181.4(2) for two years after the biennium has ended.

181.4(4) Information identified in subrule 181.4(2) must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

181.4(5) If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

181.4(6) Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

ITEM 17. Rescind rule 645—181.5(154) and adopt the following **new** rule in lieu thereof:

645—181.5(154,272C) Automatic exemption. A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or

2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or

3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or

4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

ITEM 18. Rescind rules 645—181.6(154) and 645—181.7(154) and adopt the following **new** rules in lieu thereof:

645—181.6(154,272C) Continuing education exemption for disability or illness. A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

181.6(1) The board may grant an extension of time to fulfill the continuing education requirement.

181.6(2) The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

181.6(3) The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

645—181.7(154,272C) Grounds for disciplinary action. The board may take formal disciplinary action on the following grounds:

181.7(1) Failure to cooperate with a board audit.

181.7(2) Failure to meet the continuing education requirement for licensure.

181.7(3) Falsification of information on the license renewal form.

181.7(4) Falsification of continuing education information.

ITEM 19. Rescind and reserve rules **645—181.8(154, 272C)**, **645—181.9(154,272C)**, **645—181.10(154,272C)** and **645—181.11(154,272C)**.

ITEM 20. Amend subrules 184.1(4) and 184.1(5) as follows:

184.1(4) ~~Reinstatement fee for a lapsed license or an inactive license is \$50~~ *Reactivation fee is \$170.*

184.1(5) Duplicate or reissued license certificate *or wallet card* fee is \$10.

ITEM 21. Rescind and reserve subrule **184.1(6)**.

ARC 4140B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 180, “Licensure of Optometrists,” Chapter 181, “Continuing Education for Optometrists,” and Chapter 183, “Discipline for Optometrists,” Iowa Administrative Code.

The proposed amendments remove references to continuing education sponsors, remove the requirement to submit a notarized copy of the diploma and the reference to the form in which a payment is to be made, and add a new subrule that provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Any interested person may make written comments on the proposed amendments no later than June 2, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on June 2, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **180.2(1)**, paragraph “c,” as follows:

c. An applicant shall submit the appropriate fees payable ~~by check or money order~~ to the Board of Optometry Examiners. The fees are nonrefundable.

ITEM 2. Amend subrule **180.3(3)**, paragraph “a,” as follows:

a. The applicant shall provide ~~a notarized copy of the diploma, no larger than 8 1/2" × 11", along with an official copy of the transcript sent directly from the school to the board office.~~ The transcript shall show a doctor of optometry degree from an accredited school. In the case of foreign graduates, applicants shall provide evidence of adherence to the current requirements of the NBEO to sit for the examination;

ITEM 3. Amend subrule **181.3(2)**, paragraph “a,” subparagraph (1), as follows:

(1) The continuing education programs of the Iowa Optometric Association, the American Optometric Association, the American Academy of Optometry, and national regional optometric congresses, schools of optometry, and all state optometric associations, ~~and The the~~ department of ophthalmology of the school of medicine of the University of Iowa ~~shall be one of the approved providers of continuing education for Iowa optometrists;~~

ITEM 4. Amend subrule **181.3(2)**, paragraph “b,” subparagraphs (1) and (7), as follows:

(1) Twelve hours of credit for local study group programs that ~~have prior approval or an approved sponsorship~~ *meet the criteria.*

(7) Twenty hours of credit in the treatment and management of ocular disease from ~~the University of Iowa an accredited school of optometry.~~

ITEM 5. Adopt **new** subrule 183.2(30) as follows:

183.2(30) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

ARC 4145B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners hereby gives Notice of Intended Action to amend Chapter 220, “Licensure of Podiatrists,” Chapter 222, “Continuing Education for Podiatrists,” and Chapter 225, “Fees,” Iowa Administrative Code.

These proposed amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Any interested person may make written comments on the proposed amendments no later than June 2, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on June 2, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 149 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—220.1(149)** as follows:

Rescind the definition of "lapsed license."

Adopt the following **new** definitions in alphabetical order: "Active license" means a license that is current and has not expired.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Licensure by endorsement" means the issuance of an Iowa license to practice podiatry to an applicant who is or has been licensed in another state.

"Reactivate" or "reactivation" means the process as outlined in rule 220.15(17A,147,272C) by which an inactive license is restored to active status.

"Reinstatement" means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

ITEM 2. Amend subrule **220.7(1)** by rescinding numbered paragraphs "**5**" and "**6**" and adopting in lieu thereof the following **new** numbered paragraph "**5**":

5. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- Licensee's name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license.

ITEM 3. Rescind subrule 220.9(1) and adopt in lieu thereof the following **new** subrule:

220.9(1) The biennial license renewal period for a license to practice podiatry shall begin on July 1 of an even-numbered year and end on June 30 of the next even-numbered year. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

ITEM 4. Rescind subrule 220.9(3) and adopt in lieu thereof the following **new** subrule:

220.9(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—222.2(149,272C) and the mandatory reporting requirements of subrule 220.9(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

ITEM 5. Rescind subrule 220.9(5) and adopt in lieu thereof the following **new** subrule:

220.9(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

ITEM 6. Amend subrule 220.9(7) as follows:

220.9(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 225.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card the grace period.

ITEM 7. Adopt **new** subrule 220.9(8) as follows:

220.9(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a podiatrist in Iowa until the license is reactivated. A licensee who practices as a podiatrist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

ITEM 8. Rescind rules **645—220.10(272C)** and **645—220.11(272C)**.

ITEM 9. Rescind rule 645—220.14(17A,147,272C) and adopt in lieu thereof the following **new** rule:

645—220.14(17A,147,272C) License denial.

220.14(1) When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

220.14(2) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing.

220.14(3) If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

ITEM 10. Adopt the following **new** rules:

645—220.15(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

220.15(1) Submit a reactivation application on a form provided by the board.

220.15(2) Pay the reactivation fee that is due as specified in 645—Chapter 225.

220.15(3) Provide verification of current competence to practice as a podiatrist by satisfying one of the following criteria:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 40 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 80 hours of continuing education within two years of application for reactivation.

645—220.16(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 220.15(17A,147,272C) prior to practicing as a podiatrist in this state.

ITEM 11. Amend rule **645—222.1(149,272C)** as follows:

Rescind the definitions of "administrator" and "lapsed license."

Adopt the following **new** definition in alphabetical order: "Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

Amend the following definitions:

"Active license" means ~~the~~ a license of a person who is acting, practicing, functioning, and working in compliance with license requirements that is current and has not expired.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period ~~or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.~~

"Hour of continuing education" means ~~a clock hour~~ at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means ~~the license of a person who is not engaged in practice in the state of Iowa. a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.~~

ITEM 12. Amend subrule 222.2(3) as follows:

222.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must ~~meet the requirements herein pursuant to statutory provisions and the rules that implement them~~ be in accordance with these rules.

ITEM 13. Amend rule 645—222.3(149,272C), catchwords, as follows:

645—222.3(149,272C) Standards for approval.

ITEM 14. Amend subrule **222.3(1)**, introductory paragraph and paragraph "c," as follows:

222.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is ~~determined by the board~~ that the continuing education activity:

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program, ~~and is accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The~~ At the time of audit, the board may request the qualifications of the presenters;

ITEM 15. Amend subrule **222.3(1)**, paragraph "e," subparagraphs (2) and (3), as follows:

(2) Number of program contact hours ~~(One contact hour equals one hour of continuing education credit.); and~~

(3) ~~Official signature or verification by program sponsor that includes a brochure, pamphlet, or other means that has a statement of purpose, course objectives, qualifications of speakers, program outline and continuing education hours~~ Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

ITEM 16. Rescind rule 645—222.4(149,272C) and adopt the following **new** rule in lieu thereof:

645—222.4(149,272C) Audit of continuing education report. After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

222.4(1) The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

222.4(2) The licensee shall provide the following information to the board for auditing purposes:

a. Date and location of course, course title, course description, course outline, course schedule, names and qualifications of instructors/speakers and method of presentation; or a program brochure which includes all the information required in this paragraph;

b. Number of contact hours for program attended; and

c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

222.4(3) For auditing purposes, all licensees must retain the information identified in subrule 222.4(2) for two years after the biennium has ended.

222.4(4) Information identified in subrule 222.4(2) must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

222.4(5) If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

222.4(6) Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

ITEM 17. Rescind rule 645—222.5(149,272C) and adopt the following **new** rule in lieu thereof:

645—222.5(149,272C) Automatic exemption. A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or
2. Resided in another state or district having continuing education requirements for the profession and meets all requirements of that state or district for practice therein; or
3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

ITEM 18. Rescind rule 645—222.6(149,272C) and adopt the following **new** rule in lieu thereof:

645—222.6(272C) Continuing education exemption for disability or illness. A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

222.6(1) The board may grant an extension of time to fulfill the continuing education requirement.

222.6(2) The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

222.6(3) The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

ITEM 19. Rescind rule 645—222.7(149,272C) and adopt the following **new** rule in lieu thereof:

645—222.7(149,272) Grounds for disciplinary action. The board may take formal disciplinary action on the following grounds:

- 222.7(1)** Failure to cooperate with a board audit.

222.7(2) Failure to meet the continuing education requirement for licensure.

222.7(3) Falsification of information on the license renewal form.

222.7(4) Falsification of continuing education information.

ITEM 20. Rescind and reserve rules **645—222.9(272C)** and **645—222.10(272C)**.

ITEM 21. Amend subrules 225.1(4) and 225.1(5) as follows:

225.1(4) ~~Reinstatement fee for a lapsed license or an inactive license is \$50~~ *Reactivation fee is \$190.*

225.1(5) Duplicate or reissued license certificate *or wallet card* fee is \$10.

ITEM 22. Rescind and reserve subrule **225.1(6)**.

ARC 4146B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners hereby gives Notice of Intended Action to amend Chapter 220, "Licensure of Podiatrists," Chapter 222, "Continuing Education for Podiatrists," and Chapter 224, "Discipline for Podiatrists," Iowa Administrative Code.

These amendments propose changes to the licensure chapter that remove references to the requirement that diplomas be submitted; provide that applicants may request that the board retain an incomplete application; add language to clarify which tests are required; remove the payment mechanism; and add new subrule 224.2(31) to provide the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Any interested person may make written comments on the proposed amendments no later than June 2, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on June 2, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 149 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The following amendments are proposed.

ITEM 1. Amend subrule 220.2(3) as follows:

220.2(3) Each application shall be accompanied by the appropriate fees payable ~~by check or money order~~ to the Board of Podiatry Examiners. The fees are nonrefundable.

ITEM 2. Rescind and reserve subrule **220.2(5)**.

ITEM 3. Amend subrule 220.2(8) as follows:

220.2(8) Incomplete applications that have been on file in the board office for more than two years shall be ~~considered~~:

- a. *Considered* invalid and shall be destroyed; or
- b. *Retained upon written request of the applicant. The applicant is responsible for requesting that the file be retained.*

ITEM 4. Amend subrule 220.3(1) as follows:

220.3(1) Registration materials for the examination shall be sent to the applicant after the application packet, transcript sent directly from the school to the board of podiatry examiners, licensure fee and *the score report for Part I and Part II of the NBPME examination* are received by the board.

ITEM 5. Rescind and reserve subrule **220.3(3)**.

ITEM 6. Rescind and reserve subrule **220.3(5)**.

ITEM 7. Amend subrule **220.6(2)**, paragraph "**b**," as follows:

- b. Submit the appropriate fees payable ~~by check or money order~~ to the Board of Podiatry Examiners. The fees are nonrefundable;

ITEM 8. Rescind and reserve subrule **220.6(2)**, paragraph "**d**."

ITEM 9. Amend subrule **220.6(2)**, paragraph "**f**," subparagraphs (1) to (3), as follows:

- (1) Acceptance in a residency program approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association; or

- (2) ~~Aiding a licensed podiatrist, in the state of Iowa, because of the licensee's disability; or~~

- (3) (2) Participating as a faculty member of a podiatric college in Iowa;

ITEM 10. Rescind and reserve subrule **220.6(4)**.

ITEM 11. Amend subrule 220.7(2) as follows:

220.7(2) *An applicant shall submit the passing score reports for Part I and Part II of the NBPME examination. An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state, and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant's credentials and the discretion of the board.*

ITEM 12. Amend subrule 220.7(4) as follows:

220.7(4) *An applicant shall submit passing score reports for Part III of the NBPME examination. An applicant who passed the Part III NBPME examination (PMLexis) more than three years prior to the date of application in Iowa must submit verification of proof of podiatry practice for one of the last three years.*

ITEM 13. Amend subrule **222.3(2)**, paragraph "**c**," as follows:

- c. ~~Maximums~~ *Combined maximum per biennium are as follows of 20 hours for the following continuing education source areas shall not exceed:*

- (1) Ten hours of credit for viewing videotaped presentations if the following criteria are met:

1. There is an approved sponsoring group or agency;
2. There is a facilitator or program official present;
3. The program official is not the only attendee; and
4. The program meets all the criteria in 645—222.3(149,272C).

- (2) Ten hours of credit for computer-assisted instructional courses or programs pertaining to patient care and the practice of podiatric medicine and surgery. These courses and programs must be approved by the American Podiatric Medical Association or its affiliates and have a certificate of completion that includes the following information:

1. Date course/program was completed;
2. Title of course/program;
3. Number of course/program contact hours; and
4. Official signature or verification of course/program sponsor.

- (3) *Five hours of credit for reading journal articles pertaining to patient care and the practice of podiatric medicine and surgery. The licensee must pass a required posttest and be provided with a certificate of completion.*

ITEM 14. Rescind and reserve subrule **222.3(2)**, paragraph "**e**."

ITEM 15. Adopt new subrule 224.2(31) as follows:

224.2(31) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

ARC 4149B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby gives Notice of Intended Action to amend Chapter 326, "Licensure of Physician Assistants," Chapter 328, "Continuing Education for Physician Assistants," and Chapter 330, "Fees," Iowa Administrative Code.

These proposed amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Any interested person may make written comments on the proposed amendments no later than June 2, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on June 2, 2005, from 1 to 2 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 148C and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—326.1(148C)** as follows:

Adopt the following **new** definitions in alphabetical order: "Active license" means a license that is current and has not expired.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Licensure by endorsement" means the issuance of an Iowa license to practice as a physician assistant to an applicant who is or has been licensed in another state.

"Reactivate" or "reactivation" means the process as outlined in rule 326.19(17A,147,272C) by which an inactive license is restored to active status.

"Reinstatement" means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

ITEM 2. Rescind subrule 326.4(5) and adopt the following **new** subrule in lieu thereof:

326.4(5) Provide verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- a. Licensee's name;
- b. Date of initial licensure;
- c. Current licensure status; and
- d. Any disciplinary action taken against the license.

ITEM 3. Rescind subrule 326.9(1) and adopt in lieu thereof the following **new** subrule:

326.9(1) The biennial license renewal period for a license to practice as a physician assistant shall begin on October 1 and end on September 30 two years later. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

ITEM 4. Rescind subrule 326.9(3) and adopt in lieu thereof the following **new** subrule:

326.9(3) A licensee seeking renewal shall:

- a. Meet the continuing education requirements of rule 645—328.2(148C) and the mandatory reporting requirements of subrule 326.9(4). A licensee whose license was re-

activated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

- b. Submit the completed renewal application and renewal fee before the license expiration date.

ITEM 5. Rescind subrule 326.9(5) and adopt in lieu thereof the following **new** subrule:

326.9(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

ITEM 6. Amend subrule 326.9(7) as follows:

326.9(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 330.1(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card the grace period.

ITEM 7. Adopt **new** subrule 326.9(8) as follows:

326.9(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a physician assistant in Iowa until the license is reactivated. A licensee who practices as a physician assistant in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

ITEM 8. Rescind and reserve rules **645—326.10(272C)** and **645—326.11(272C)**.

ITEM 9. Rescind rule 645—326.14(272C) and adopt in lieu thereof the following **new** rule:

645—326.14(272C) License denial.

326.14(1) When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

326.14(2) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing rules shall specifically describe the facts to be contested and determined at the hearing.

326.14(3) If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

ITEM 10. Adopt the following **new** rules:

645—326.19(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

326.19(1) Submit a reactivation application on a form provided by the board.

326.19(2) Pay the reactivation fee that is due as specified in 645—Chapter 330.

326.19(3) Provide verification of current competence to practice as a physician assistant by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 100 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 200 hours of continuing education within two years of application for reactivation, of which at least 40 percent of the hours completed shall be in Category I; and

(3) Information on each supervising physician.

645—326.20(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 326.19(17A,147,272C) prior to practicing as a physician assistant in this state.

ITEM 11. Amend rule **645—328.1(148C)** as follows:

Rescind the definitions of "administrator" and "lapsed license."

Adopt the following **new** definitions in alphabetical order: "Active license" means a license that is current and has not expired.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

Amend the following definitions:

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

"Hour of continuing education" means a ~~clock hour~~ at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

ITEM 12. Amend subrules 328.2(3) and 328.2(4) as follows:

328.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them in accordance with these rules.

328.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

ITEM 13. Amend rule 645—328.3(148C), catchwords, as follows:

645—328.3(148C,272C) Standards for approval.

ITEM 14. Amend subrule 328.3(1), introductory paragraph and paragraph "c," as follows:

328.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. *The At the time of audit, the board may request the qualifications of presenters;*

ITEM 15. Amend subrule **328.3(1)**, paragraph "c," subparagraphs (2) and (3), as follows:

(2) Number of program contact hours (~~One contact hour equals one hour of continuing education credit.~~); and

(3) ~~Official signature or verification by program sponsor~~ *Certificate of completion or evidence of successful completion of the course provided by the course sponsor.*

ITEM 16. Rescind rule 645—328.4(148C) and adopt the following **new** rule in lieu thereof:

645—328.4(148C,272C) Audit of continuing education report. After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

328.4(1) The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee of the board. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

328.4(2) The licensee shall provide the following information to the board for auditing purposes:

a. Date and location of course, course title, course description, course outline, course schedule, names and qualifications of instructors/speakers and method of presentation; or a program brochure which includes all the information required in this rule;

b. Number of contact hours for program attended; and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

328.4(3) For auditing purposes, all licensees must retain the information identified in subrule 328.4(2) for two years after the biennium has ended.

328.4(4) Information identified in subrule 328.4(2) must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

328.4(5) If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

328.4(6) Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

ITEM 17. Rescind rule 645—328.5(148C) and adopt the following **new** rule in lieu thereof:

645—328.5(148C,272C) Automatic exemption. A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or
2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or
3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

ITEM 18. Rescind rules 645—328.6(148C) and 645—328.7(148C) and adopt the following **new** rules in lieu thereof:

645—328.6(148C) Continuing education exemption for disability or illness. A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

328.6(1) A licensee requesting an extension or exemption shall submit a request on a form approved by the board that sets forth the reasons for the request and has been signed by the licensee and the attending physician.

328.6(2) The board may grant an extension of time to fulfill the continuing education requirement.

328.6(3) The board may grant an exemption from the continuing education requirement for any period of time not to

exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

328.6(4) The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

645—328.7(148C,272C) Grounds for disciplinary action. The board may take formal disciplinary action on the following grounds:

328.7(1) Failure to cooperate with a board audit.

328.7(2) Failure to meet the continuing education requirement for licensure.

328.7(3) Falsification of information on the license renewal form.

328.7(4) Falsification of continuing education information.

ITEM 19. Rescind rules **645—328.8(148C)**, **645—328.9(148C)** and **645—328.10(272C)**.

ITEM 20. Amend subrules 330.1(5) and 330.1(6) as follows:

330.1(5) ~~Reinstatement fee is \$50~~ *Reactivation fee is \$100.*

330.1(6) Duplicate or reissued license certificate *or wallet card* fee is \$10.

ITEM 21. Rescind and reserve subrule **330.1(7)**.

ARC 4148B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby gives Notice of Intended Action to amend Chapter 329, "Discipline for Physician Assistants," Iowa Administrative Code.

Proposed new subrule 329.2(31) provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Any interested person may make written comments on the proposed amendment no later than June 2, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on June 2, 2005, from 1 to 2 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 148C and 272C.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt **new** subrule 329.2(31) as follows:

329.2(31) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

ARC 4172B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 434.11, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 76, “Determination of Value of Railroad Companies,” Iowa Administrative Code.

Item 1 amends subrule 76.1(7) to clarify that only capital leases and not all leases are to be included in the stock and debt approach.

Item 2 amends subrule 76.1(10) to exclude operational leases from the definition of “leased assets.”

Item 3 amends subrule 76.4(5) to provide that only capital leases of operating property are to be used in the calculation of market value.

Item 4 amends subrule 76.4(6) to remove accumulated deferred income taxes and current liabilities from the stock and debt approach and to include the calculation for “net working capital.”

Item 5 amends rule 701—76.5(434) to explain the calculations used to determine net railway operating income to be capitalized under the income approach to value; to remove the adjustment to the income indicator for sources of capital when a railroad is not allowed to earn a return on the assets purchased by that source of capital; and to remove the adjustment to the capitalization rate for deferred income taxes when a railroad company can earn a return on assets purchased with this source of capital.

Item 6 amends rule 701—76.7(434) to change the correlation of value for class I railroads to 50 percent for stock and debt, 50 percent income, and 0 percent cost.

Item 7 amends rule 701—76.9(434) to explain the personal property deduction and the intangible value deduction required pursuant to a federal court ruling.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code sec-

tion 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than June 13, 2005, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 31, 2005. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by June 3, 2005.

These amendments are intended to implement Iowa Code chapter 434.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 76.1(7) as follows:

76.1(7) The term “stock and debt approach to unit value” shall mean the estimate of unit market value determined by combining the estimate of market value of the stock, debt, current liabilities, other liabilities, including *capital* leases, and deferred credits associated with the operating property of a railroad company.

ITEM 2. Amend subrule 76.1(10) as follows:

76.1(10) The term “leased assets” shall mean ~~both operational and capital~~ leases.

ITEM 3. Amend subrule 76.4(5), introductory paragraph, as follows:

76.4(5) In the event the railroad company has entered into *capital* leases of operating property, the market value of the property leased shall be determined by calculating the net present value of the leases, ~~which or net book value of the leases.~~ *The net present value* shall be accomplished by discounting the future lease payments for each lease. The following is offered as an illustration of the calculation of such market value:

ITEM 4. Amend subrule 76.4(6) as follows:

76.4(6) In the event the railroad company has other sources of capital, ~~such as (by way of illustration and not limitation) current including, but not limited to, other liabilities, accumulated deferred income taxes capital leases, and accumulated investment tax credits which cannot be identified as having been utilized to purchase specific assets,~~ the market value of ~~such the~~ sources of capital shall be allocated between operating and nonoperating assets in the same manner as long-term debt or preferred stock. *Current liabilities and accumulated deferred income taxes are not to be included in this calculation. The book value of accumulated deferred income taxes should be deducted from the market value of the*

REVENUE DEPARTMENT[701](cont'd)

stock and debt approach before making this calculation. Likewise, current liabilities should be deducted from current assets and the resulting figure, if positive, should be added to the market value of the stock and debt approach and, if negative, should be deducted. The resulting figure, "net working capital," shall be allocated in the same manner as long-term debt or preferred stock (see subrules 76.4(2) and 76.4(3)). If any such source of capital was created specifically for the purchase of property which can be identified as operating property or nonoperating property, the railroad company must identify such the sources of capital in their annual report to the department, together with the appropriate evidence of such. If the railroad company fails to provide such the information, the department may determine that such the sources of capital may be allocated in the same manner as long-term debt or preferred stock (see subrules 76.4(2) and 76.4(3)). The market value of any such source of capital, in the absence of evidence to the contrary submitted by the railroad with its annual report, shall be the book value.

ITEM 5. Amend rule 701—76.5(434) as follows:

701—76.5(434) Income capitalization approach to unit value.

76.5(1) The income capitalization approach to unit value estimates the market value of the operating property by dividing the income stream generated by the operating assets by a market-derived capitalization rate based on the costs of the various sources of capital utilized or available for use to purchase the assets generating the income stream. *The net railway operating income to be capitalized shall be a weighted average net railway operating income. The weighted average net railway operating income shall consist of an average of the three 12-month periods immediately preceding the valuation date. Each of the three preceding 12-month periods shall be weighted by multiplying the first preceding period by 60 percent, the second preceding period by 30 percent, and the third preceding period by 10 percent. There shall be no adjustment for the company's current-year deferred income taxes to this income stream.*

The director may also utilize a "free cash flow model" in calculating the railway operating income to be capitalized. The "free cash flow model" shall consist of an average of the five 12-month periods immediately preceding the valuation date. Each of the five preceding 12-month periods shall be given equal weighting in the calculation of the five-year average railway operating income to be capitalized. Each year the net railway operating income shall be adjusted by adding the current-year deferred income taxes associated with maintenance expenditures, adding the current-year depreciation expense, and subtracting the current-year capital expenditures necessary to maintain the plant. The director may give consideration to both calculations of operating income as

described in this subrule to determine the railway operating income to be capitalized.

The director may also consider, in both calculations, adjustments for extraordinary, unusual, and infrequent items. These adjustments would not be expected to occur annually and are different from the typical railroad business operations. The purpose and intent of the income indicator of value is to match income with sources of capital and therefore every source of capital utilized or available to be utilized to purchase assets should be reflected in the capitalization rate determination as well as all operating income. The director shall not include a separate adjustment to either income stream for noncapitalized operating leases. In the event the railroad company has no income or has a negative income, the indicator of value set forth in this subrule shall not be utilized.

76.5(2) ~~If the railroad company is one which is not allowed to earn a return on assets purchased with sources of capital such as the company's deferred income taxes, the income will not reflect the earnings on those assets, and as a consequence, a separate adjustment to the income indicator of value must be made to account for the value of those assets. In such instances, the income indicator of value shall be increased by an amount equal to the book value of the source of capital involved, such as the accumulated deferred income taxes. If any other operating property is clearly not income producing and, therefore, is not reflected in the income stream, the value of that asset shall be determined separately and added to the value of the other operating property as determined using the income indicator of value. The capitalization rate shall be adjusted, if necessary, for the market rate of return for the sources of capital utilized to purchase such non-income-producing properties where the sources can be clearly identified; otherwise the cost of the sources of capital shall be presumed to be equal to the overall market-weighted costs of the other sources of capital.~~

76.5(3) If the railroad company is one which can earn a return on assets purchased with sources of capital such as, excluding the company's deferred income taxes, the income will reflect the earnings on those assets, and as a consequence, a separate adjustment to the capitalization rate is required. The capitalization rate shall be determined by utilizing, where appropriate, market rates of return weighted according to a market-determined capital structure, with the exception of deferred credits whose market value shall be equal to its value on the company's books and whose cost shall be zero. All sources of capital shall be considered in the capital structure as well as market costs associated with each source of capital; otherwise the cost of the sources of capital shall be presumed to be equal to the overall market-weighted costs of the identified sources of capital. The following is an example of the application of this rule.

	(1)	(2)	(3)	(4)
	Market Value	Market Rate of Return	% to Total	Component (Col. 2 × Col. 3)
Common Stock	60,000	15%	62.50 66.67	9.38 10.00
Preferred Stock	5,000	13%	5.21 5.55	.68 .72
Debt	25,000	12%	26.04 27.78	3.12 3.33
Deferred Credits	6,000	—0—	6.25	—0—
	<u>96,000 90,000</u>		<u>100.00</u>	<u>13.18 14.05</u>

This rule is intended to implement Iowa Code section 434.15.

REVENUE DEPARTMENT[701](cont'd)

ITEM 6. Amend rule 701—76.7(434) as follows:

701—76.7(434) Correlation. In making a final determination of value, the director shall give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the railroad company's entire operating property. ~~Generally, the stock and debt indicator of value shall be considered to be the most useful, the income indicator the next most useful and the cost indicator the least useful. The stock and debt indicator of value and the income indicator of value shall each be weighted at 50 percent. In this particular circumstance, when the director utilizes the stock and debt indicator and the income indicator in the correlation process, the cost indicator will be given no weighting.~~ If circumstances dictate that a particular method is inappropriate for a specific company, that method shall ~~not~~ be given ~~any weight little or no weight~~ in the final correlation of value.

This rule is intended to implement Iowa Code section 434.15.

ITEM 7. Amend rule 701—76.9(434) by adding the following **new** subrules:

76.9(3) From the estimate of value determined under rule 76.8(434), the value of Iowa personal property shall be deducted pursuant to Burlington Northern Railroad Company vs. Gerald D. Bair, Director of the Department of Revenue of Iowa—United States District Court Order-Civil No. 83-100-A. The computation for the percentage of personal property shall be equal to the ratio of the net book value of personal property divided by the net book value of the total property.

76.9(4) From the estimate of value determined under rule 76.7(434), the intangible value shall be deducted pursuant to Burlington Northern Railroad Company vs. Gerald D. Bair, Director of the Department of Revenue of Iowa—United States District Court Order No: 4-90CV-60406. The deduction shall be equal to 6.6 percent of the correlated system value for the stock and debt indicator and the income indicator.

ARC 4151B**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 500, "Interstate Registration and Operation of Vehicles," Iowa Administrative Code.

2005 Iowa Acts, House File 216, section 41, changed the length of temporary authority for registration from 90 days to 60 days. This amendment reflects this change.

Any person or agency may submit written comments concerning this proposed amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.iowa.gov.

5. Be received by the Director's Staff Division no later than May 31, 2005.

A meeting to hear requested oral presentations is scheduled for Thursday, June 2, 2005, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

This amendment is intended to implement Iowa Code chapter 326.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Proposed rule-making action:

Amend rule 761—500.9(326) as follows:

761—500.9(326) Fleet additions and temporary authority. A registrant may submit a vehicle schedule to change the fleet operations. A temporary authority may be issued to operate a vehicle(s) for the period of time required to process the vehicle schedule. The temporary authority shall not exceed 90 60 days. However, at the discretion of the permitting authority, the 90-day 60-day temporary authority may be extended if there are extenuating circumstances. Once temporary authority is generated and used, fees shall be due and the invoice may only be canceled if an error was made by the department or there were extenuating circumstances for which nonuse can be proven.

This rule is intended to implement Iowa Code section 326.11 as amended by 2005 Iowa Acts, House File 216, section 41.

ARC 4130B**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 605, "License Issuance," and Chapter 607, "Commercial Driver Licensing," Iowa Administrative Code.

School bus endorsement. These amendments adopt a new school bus endorsement for commercial driver's licenses. After September 30, 2005, all persons operating commercial motor vehicles meeting the definition of "school bus" are required to have a school bus endorsement added to their commercial driver's licenses. A school bus is a com-

TRANSPORTATION DEPARTMENT[761](cont'd)

mercial motor vehicle used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. A school bus does not include a bus used as a common carrier.

An applicant for a school bus endorsement must qualify for a passenger vehicle endorsement and pass both a knowledge test and a skills test for the school bus endorsement. However, up to and including September 30, 2005, the skills test is waived for applicants who meet the requirements of 49 CFR Section 383.123(b). Basically, this waiver applies to individuals who possess a commercial driver's license with a passenger vehicle endorsement, have recently been employed as school bus drivers, and have good driving records.

The fee for a school bus endorsement is \$10, as specified in 2005 Iowa Acts, House File 216, section 16.

Hazardous material endorsement. These amendments adopt new federal requirements for persons applying for or renewing hazardous material endorsements. The Transportation Security Administration must determine that the applicant does not pose a security threat before the endorsement can be issued. The applicant must also provide proof of citizenship or immigration status. Iowa Code section 321.188 requires applicants for hazardous material endorsements to comply with the federal security threat assessment requirements.

Federal regulations for security threat assessments provide for appeals and waivers. Appeals and waivers are decided by the Transportation Security Administration.

Other amendments. Item 3 adds an optional form that persons with military extensions may use to request retention of their driver's license records. Other amendments correct the rules to reflect the provisions of the current Iowa Code or the provisions of 2005 Iowa Acts, House File 216. Notable statutory changes include the following:

- Pursuant to Iowa Code section 321.198 as amended by 2005 Iowa Acts, House File 216, section 19, a military extension is no longer limited to noncommercial Class C or Class M licenses.
- 2005 Iowa Acts, House File 216, sections 22 to 25, updates the list of acts or offenses that disqualify a person from operating a commercial motor vehicle.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: julie.fitzgerald@dot.iowa.gov.
5. Be received by the Director's Staff Division no later than May 31, 2005.

A meeting to hear requested oral presentations is scheduled for Thursday, June 2, 2005, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

Once these rule amendments are adopted after the Notice of Intended Action process is complete, the Department in-

tends to use the provisions of Iowa Code subparagraph 17A.5(2)“b”(2) and make the rule amendments effective July 1, 2005.

These amendments are intended to implement Iowa Code chapter 321 and 2005 Iowa Acts, House File 216.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Proposed rule-making actions:

ITEM 1. Amend subrule 605.4(1) as follows:

605.4(1) For a commercial driver's license. The following endorsements may be added to a Class A, B or C commercial driver's license using these letter codes:

- H—Hazardous material
- P—Passenger
- N—Tank
- X—Hazardous material and tank
- T—Double/triple trailers
- S—School bus

ITEM 2. Amend rule 761—605.10(321) as follows:

761—605.10(321) Waiver or refund of license fees—pilot project. This rule establishes the pilot project authorized by 2000 Iowa Acts, House File 2538, section 5.

605.10(1) to 605.10(3) No change.

605.10(4) This pilot project is limited to issuance activity at the driver's license stations in Burlington, Iowa, and Davenport, Iowa.

This rule is intended to implement 2000 Iowa Acts, House File 2538, section 5 *Iowa Code section 321.192*.

ITEM 3. Amend rule 761—605.16(321) as follows:

761—605.16(321) Military extension.

605.16(1) Form 430028. A person who qualifies for a military extension of a valid license should request Form 430028 from the department and carry it with the license for verification to peace officers. Form 430028 explains the *provisions of Iowa Code section 321.198 regarding military extension extensions*.

a. ~~A military extension shall apply only to a noncommercial Class C or Class M license, or their equivalents.~~

b. ~~When the license is renewed, the department may require the person to provide documentation of the military service and of the date of separation from service.~~

605.16(2) Record Request for retention of record. A person with a military extension may request that the department retain ~~or reenter~~ the record of license issuance for the duration of the extension ~~or reenter the record if it has been removed from department records. The request may be made by letter or by using Form 430081. The requesting letter or Form 430081 shall be submitted with the required letter from signed by the person's commanding officer to verify the military service and shall be submitted to the department at the address in 761—600.2(17A).~~

605.16(3) Renewal of license after military extension. *When an applicant renews a license after a military extension, the department may require the applicant to provide documentation of both the military service and the date of separation from military service.*

605.16(3) 605.16(4) Reinstatement after sanction. A person with a military extension whose license has been canceled, suspended or revoked shall comply with the requirements of 761—615.40(321) to reinstate the license.

TRANSPORTATION DEPARTMENT[761](cont'd)

This rule is intended to implement Iowa Code section 321.198.

ITEM 4. Amend rule 761—607.3(321) as follows:

761—607.3(321) Definitions. The definitions in Iowa Code section 321.1 apply to this chapter of rules. In addition, the following definitions are adopted:

“Air brake system” means a system that uses air as a medium for transmitting pressure or force from the driver’s control to the service brake. It “*Air brake system*” does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic, electrical or mechanical components.

“Commercial motor vehicle” as defined in Iowa Code section 321.1 does not include a motor vehicle designed as off-road equipment rather than as a motor truck, such as a forklift, motor grader, scraper, tractor, trencher or similar industrial-type equipment. It “*Commercial motor vehicle*” also does not include the self-propelled machinery implements of husbandry described in Iowa Code paragraph subsection 321.1(32)“f.” 321.1(32).

“Controlled substance” as used in Iowa Code section 321.208 means a substance defined in Iowa Code section 124.101.

“Passenger vehicle” means either of the following:

1. A motor vehicle designed to transport 16 or more persons including the operator.
2. A motor vehicle of a size and design to transport 16 or more persons including the operator which is redesigned or modified to transport less fewer than 16 handicapped persons with disabilities. The size of a redesigned or modified vehicle shall be any such vehicle with a gross vehicle weight rating of 10,001 or more pounds.

“School bus” means a commercial motor vehicle used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. “School bus” does not include a bus used as a common carrier.

“State,” as used in “another state” in Iowa Code subsection 321.174(2), “Former state of residence” in Iowa Code subsection 321.188(5), or “any state” in Iowa Code subsection 321.208(1), means one of the United States, the District of Columbia, a Canadian province or a Mexican state unless the context means the state of Iowa.

This rule is intended to implement Iowa Code sections 321.1, 321.174, 321.188, 321.191, 321.193 and 321.208.

ITEM 5. Amend rule **761—607.6(321)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.1, and 321.176A and 321.197.

ITEM 6. Amend subrule **607.10(1)**, paragraph “c,” as follows:

c. The following portions of 49 CFR Part 383 (October 1, 2004 2004):

(1) Section 383.51(b)(2), ~~Disqualifying Offenses Disqualification for major offenses~~, and Section 383.51(b)(3)(v) ~~pertaining to the 10-year disqualification~~ 383.51(a)(5), *Reinstatement after lifetime disqualification*.

(2) Subpart E—Testing and Licensing Procedures, which contains Sections 383.71-383.77.

(3) Subpart G—Required Knowledge and Skills, which contains Sections 383.110-383.121 383.123.

(4) Subpart H—Tests, which contains Sections 383.131-383.135.

ITEM 7. Amend rule 761—607.16(321) as follows:

761—607.16(321) Commercial driver’s license (CDL).

607.16(1) No change.

607.16(2) Validity.

a. to d. No change.

e. A commercial driver’s license valid for ~~two years or four years, at the option of the applicant, five years~~ shall be issued to a qualified applicant who is at least 18 years of age but not yet 70 years of age.

f. and g. No change.

~~h. A military service extension is not applicable to a commercial driver’s license.~~

i h. A person with a commercial driver’s license valid for the vehicle operated is not required to obtain a Class D license to operate the vehicle as a chauffeur.

607.16(3) No change.

This rule is intended to implement Iowa Code sections 321.177, 321.182, 321.188, 321.189, and 321.196, 321.197 and 321.198.

ITEM 8. Amend rule 761—607.17(321) as follows:

761—607.17(321) Endorsements. All endorsements except the hazardous material endorsement continue to be valid without retesting or additional fees when renewing or upgrading a license. The endorsements that authorize additional commercial motor vehicle operations with a commercial driver’s license are:

607.17(1) to 607.17(5) No change.

607.17(6) *School bus.* After September 30, 2005, a school bus endorsement is required to operate a school bus as defined in rule 607.3(321). An applicant for a school bus endorsement must also qualify for a passenger vehicle endorsement.

~~607.17(6)~~ **607.17(7)** Exceptions for towing operations.

a. and b. No change.

This rule is intended to implement Iowa Code sections 321.1, 321.176A, and 321.189.

ITEM 9. Amend rule 761—607.20(321) as follows:

761—607.20(321) Commercial driver’s instruction permit.

607.20(1) Validity.

a. A commercial driver’s instruction permit allows the permit holder to operate a commercial motor vehicle when accompanied by a person licensed for the vehicle being operated. Examples of permissible vehicle operation include but are not limited to:

(1) No change.

(2) Operation of a vehicle requiring an endorsement *other than a hazardous material endorsement*.

(3) No change.

b. and c. No change.

607.20(2) Requirements.

a. No change.

b. The applicant must have a valid Class A, B, C, or D license other than an instruction permit, a special instruction permit, or a motorized bicycle license or a temporary restricted license.

c. No change.

This rule is intended to implement Iowa Code sections 321.180, 321.186 and 321.188.

ITEM 10. Amend rule 761—607.27(321) as follows:

761—607.27(321) Knowledge tests.

TRANSPORTATION DEPARTMENT[761](cont'd)

607.27(1) No change.

607.27(2) Additional tests. In addition to the general knowledge test for a commercial driver's license, an additional knowledge test is required for each of the following:

a. to e. No change.

f. *School bus endorsement as required in 49 CFR Section 383.123. The applicant must also qualify for a passenger vehicle endorsement.*

g. Removal of the air brake restriction as required in 49 CFR Section 383.111.

607.27(3) to 607.27(5) No change.

This rule is intended to implement Iowa Code sections 321.186 and 321.188.

ITEM 11. Amend rule 761—607.28(321) as follows:

761—607.28(321) Skill tests.

607.28(1) No change.

607.28(2) Vehicle. The applicant shall provide a representative vehicle for the skills test. "Representative vehicle" means a commercial motor vehicle that meets the statutory description for the class of license applied for.

a. *To obtain a passenger vehicle endorsement applicable to a specific vehicle class, the applicant must take the skills test requires that the skills test be performed in a passenger vehicle, as defined in rule 607.3(321), satisfying the requirements of that class, and as required in 49 CFR Section 383.117.*

b. *To obtain a school bus endorsement, the applicant must qualify for a passenger vehicle endorsement and take the skills test in a school bus, as defined in rule 607.3(321), in the same vehicle class as the applicant will drive, as required in 49 CFR Section 383.123. Up to and including September 30, 2005, the skills test for a school bus endorsement is waived for an applicant meeting the requirements of 49 CFR Section 383.123(b).*

b c. ~~Removal of the~~ *To remove an air brake restriction, the applicant must take requires that the skills test be performed in a vehicle equipped with an air brake system, as defined in rule 607.3(321) and as required in 49 CFR Section 383.113.*

607.28(3) No change.

607.28(4) ~~Third-party driving skills testing. Reserved.~~

This rule is intended to implement Iowa Code sections 321.186 and 321.188.

ITEM 12. Amend subrule 607.39(2) as follows:

607.39(2) Notice. A 30-day advance notice of disqualification shall be served by the department in accordance with rule 761—615.37(321). Pursuant to Iowa Code Supplement subsection 321.208(8) 321.208(9), a peace officer on behalf of the department may serve the notice of disqualification immediately.

ITEM 13. Amend subrule **607.49(6)**, paragraph "d," as follows:

d. A restricted commercial driver's license may be renewed for ~~either two years or four years~~ *the period of time specified in Iowa Code section 321.196*. The licensee's good driving record shall be confirmed at the time of renewal.

ARC 4157B

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4 and 476.2 and 2005 Iowa Acts, House File 277, the Utilities Board gives notice that on April 22, 2005, the Board issued an order in Docket No. RMU-05-6, *In re: Revised Rules for Telecommunications Providers [199 IAC 22]*, "Order Commencing Rule Making," to receive public comment on new proposed rules that implement changes to Iowa Code section 476.1D, subsections 1, 2, and 3, pursuant to the amended statute, 2005 Iowa Acts, House File 277, which becomes effective on July 1, 2005, and to update and clarify the Board's rules relating to the provision of telecommunications service.

With the enactment of the amended statute, several of the Board's rules that describe or relate to rate-regulated telecommunications carriers are no longer applicable. Therefore, the Board proposes in this rule making to make the necessary corrections to 199—Chapter 22 to appropriately reflect the statutory amendments.

In addition, the Board has reviewed Chapter 22 in its entirety and has found some rules that are no longer used, are irrelevant, or are in need of clarification. Therefore, the Board also proposes to make other appropriate changes to Chapter 22 in this rule making.

The order commencing rule making contains a more thorough discussion of the reasons for the proposed rule making. The order is available on the Board's Web site at www.state.ia.us/iub.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to a proposed rule. The statement must be filed on or before June 6, 2005, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 9 a.m. on Friday, June 24, 2005, in the Board's hearing room at the address listed above. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code section 476.1D, subsections 1, 2, and 3, as amended by 2005 Iowa Acts, House File 277.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 22.1(1) as follows:

UTILITIES DIVISION[199](cont'd)

22.1(1) Application and purpose of rules. The rules shall apply to any telephone utility operating within the state of Iowa subject to Iowa Code chapter 476, and shall supersede all conflicting rules of any telephone utility which were in force and effect prior to the adoption of their superseding rules. Unless otherwise indicated, “telephone utility” or “utility” shall mean both local exchange utility and ~~interexchange utility~~ *alternative operator services company*. These rules shall be construed in a manner consistent with their intent:

a. To allow fair competition in the public interest while ~~assuring~~ *ensuring* the availability of safe and adequate communications service to the public.

b. To provide uniform, reasonable standards for communications service provided by telephone utilities.

c. To ~~assure~~ *ensure* that the *regulated rates of local exchange utilities and the charges of rate-regulated telephone utilities alternative operator services companies* for communications service, and regulated services rendered in connection therewith, will be reasonable and just.

d. To ~~assure~~ *ensure* that no telephone utility shall unreasonably discriminate among different customers or service categories ~~or on the basis of source or ownership of terminal equipment or existing or new inside station wiring~~.

ITEM 2. Amend subrule **22.1(3)** as follows:

Amend the following definitions:

“Demarcation point” means the point of connection provided and maintained by the telephone utility to which ~~existing or new~~ inside station wiring becomes dedicated to an individual building or facility. For an individual dwelling, this point of connection will generally be immediately adjacent to, or within 12 inches of, the protector or the dwelling side of the protector. The drop and block, including the protector, will continue to be provided by and remain the property of the telephone utility. In the instance where a physical protector does not exist at the point of cable entrance into the building or facility, the demarcation point is defined as the entrance point of the cable into the building or facility.

“Local *exchange* service” means telephone service furnished between customers or users located within an exchange area.

“Local exchange utility” means a telephone utility that provides local *exchange* service under tariff filed with the board. The utility may also provide other services and facilities such as access service.

“Rates” shall mean ~~recurring~~ amounts billed to customers for ~~regulated services~~ *local exchange service* and ~~equipment~~ *alternative operator services*.

“Tariff” means the entire body of regulated rates, ~~alternative operator services rates, tolls, rentals, charges,~~ classifications, rules, procedures, policies, etc., adopted and filed with the board by a telephone utility in fulfilling its role of furnishing communications services.

“Toll rate” means the ~~tariff~~ charge prescribed for toll messages, usually based upon the duration of the message, the distance between the exchanges, the day and time of the message and the degree of operator assistance.

Adopt the following **new** definition in alphabetical order:

“Regulated rates” means single line flat-rated residential and business service rates billed to customers pursuant to Iowa Code section 476.1D(1) as amended by 2005 Iowa Acts, House File 277, section 1.

Rescind the following definitions: “charges”; “existing inside station wiring”; “flat rate service”; “grade of service”; “multiparty service”; “new inside station wiring”; “official

company station equipment”; “other supplier”; “toll station”; “toll station service”; and “transition date.”

ITEM 3. Amend subrule **22.1(4)** by rescinding the following abbreviations:

AMA—Automatic Message Accounting

ANC—All Number Calling

ANI—Automatic Number Identification

CAMA—Centralized Automatic Message Accounting

CATV—Community Antenna Television

CB—Common Battery

CDO—Community Dial Office

COE—Central Office Equipment

DDD—Direct Distance Dialing

D-TPL—Dial Terminal Per Line

D-TPS—Dial Terminal Per Station

IMTS—Improved Mobile Telephone Service

INWATS—Inward Wide Area Telephone Service

MG—Magnet

MMM—Message Minute Miles

NFPA—National Fire Protection Association

PABX—Private Automatic Branch Exchange

SLU—Subscriber Line Usage

TSP—Traffic Service Position

TSPS—Traffic Service Position System

TWX—Teletypewriter Exchange Service

WATS—Outward Wide Area Telephone Service

ITEM 4. Rescind and reserve subrule **22.1(6)**.

ITEM 5. Amend subrule 22.2(3) as follows:

22.2(3) Tariffs to be filed with the board. The utility shall file its tariff with the board, and shall maintain such tariff filing in a current status. A copy of the same tariff shall also be on file in all business offices of the telephone utility and shall be available for inspection by the public.

The schedules of ~~rates of rate-~~ *regulated rates and alternative operator services rates* ~~utilities and rules of all utilities~~ shall be filed with the board and shall be classified, designated, arranged and submitted so as to conform to the requirements of current tariff or rate schedule circulars and special instructions which have been or may from time to time be issued by the board. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification and content of tariffs shall be in accordance with these rules unless otherwise provided in rule 22.14(476).

Utilities which are not subject to the rate regulation provided for by Iowa Code chapter 476, shall not ~~be required to file schedules of rates, or contracts primarily concerned with a rate schedule, with the board but nothing~~. *Nothing* contained in these rules shall be deemed to relieve any utility of the requirement of furnishing any of these same schedules or contracts which are needed by the board in the performance of the board’s duties upon request to do so by the board. *Every telephone utility shall make the schedule of its rates readily available to customers on the utility’s Web site, if the utility has one, or by mail, upon request.*

ITEM 6. Amend subrule **22.2(5)** as follows:

Amend paragraphs “a,” “b,” “f,” “m,” and “t” as follows:

a. A table of contents containing a list of ~~exchange rate schedules~~ *regulated rates or alternative operator services rates* and other sections in the order in which they appear showing the sheet number of the first page of each rate schedule or other section. In the event the utility filing the tariff elects to segregate a section such as general rules from the

UTILITIES DIVISION[199](cont'd)

section containing the rate schedules *regulated rates, alternative operator services rates*, or other sections, it may at its option prepare a separate table of contents or index for each such segregated section.

b. ~~All regulated rates and alternative operator services rates shall be included in tariffs. of rate regulated utilities for service defining the classes and grades of service that are available to the customers and to which each rate applies as well as the rate to be charged to the customer for directory assistance calls in excess of the limit established by the board under which no charge shall be assessed. With these rate schedules, Local exchange utilities shall file a map shall be filed which shall clearly define the base rate boundary and any rural or special zones that are set forth in the tariff. The boundary line location on such maps shall be delineated from fixed reference points.~~

f. ~~The list of exchange areas served, and the standard rates associated therewith, where rate control is authorized by law, shall be filed in such form as to facilitate ready determination of the rates available. If the utility has mileage extension charges, the areas where mileage rates apply shall be indicated.~~

m. ~~Rules covering temporary, emergency, auxiliary and standby service.~~

t. ~~A copy of each standard type of customer bill form in current use. Prior to implementation, the location of all information relating to network design, technical standards, interface specifications or changes to the telecommunications network, which would affect either intercarrier interconnection or the manner in which terminal equipment and existing or new inside station wiring is attached to the network.~~

~~Rescind and reserve paragraphs "u" and "v."~~

ITEM 7. Amend subrule 22.2(6) as follows:

22.2(6) Annual, periodic and other reports to be filed with the board.

a. ~~Exchange area boundary maps. The utility shall file annually a verification that it has a currently correct set of exchange area boundary maps on file with the board in accordance with 22.20(3).~~

b. ~~The utility shall file annually a report of all important additions to the telephone plant by exchange or location, the construction or acquisition of which was completed by the utility during the preceding year and that which is planned for the current year. For the purpose of this rule an important addition to plant shall mean a single project involving the expenditure of more than \$50,000 or an amount equivalent to more than 25 percent of the total telephone plant in service, whichever is less.~~

c. ~~a. Each local exchange utility shall compile a monthly record, by exchange central office, and of outside trouble reports and of held orders. Each call or written statement received shall be considered a separate report, even though it may duplicate a previous report or merely involve an inquiry concerning progress on a previous report. This information shall be supplied on forms approved by the board. The records shall be compiled not later than 30 days after the end of the month covered and shall, upon and after compilation, be kept available for inspection by the board or its staff. A summary of the 12 monthly records shall be attached to and submitted with the utility's annual report to the board.~~

d. ~~The utility shall keep the board informed currently by written notice as to the location at which the utility keeps the various classes of records required by these rules.~~

e. ~~A copy of each standard type of customer bill form in current use shall be filed with the board.~~

f. ~~b. The name, title, address and telephone number of the person who is authorized to receive, act upon and respond to communications from the board in connection with the following:~~

- (1) General management duties.
- (2) Customer relations (complaints).
- (3) Engineering operations.
- (4) Emergencies during nonoffice hours.

g. ~~c. A copy of a new directory being distributed to customers.~~

h. ~~A copy of any application for waiver, modification or clarification (however denominated) the utility files with the Federal Communications Commission with respect to its decision in Docket No. 20828.~~

i. ~~Any index of list which comprehensively catalogs or cross-references tariffed offerings for internal management or sales purposes.~~

ITEM 8. Amend subrule 22.3(1) as follows:

22.3(1) Directories. All directories published after the effective date of these rules shall conform to the following:

a. Telephone directories shall be published not less than annually except for good cause shown, listing the name, address and telephone number of all customers unless otherwise requested by the customer. *A local exchange carrier serving an exchange may choose not to publish a telephone directory if the local exchange makes arrangements for publication in a directory that is commonly available in the local exchange in question.*

b. Upon issuance, a copy of each directory shall be distributed *without charge* to all customers locally served by that directory *and at a nominal charge for other persons.*

c. The year of issue *or effective dates* shall appear on the front cover and, if space permits, on the back binding. Information pertaining to emergency calls, such as for the police and fire departments, for each exchange listed in the directory shall appear conspicuously on the front side of the first page of the directory. The directory shall also show a summary of the names of listed exchanges with the name of each serving telephone utility next to the exchanges it serves.

d. to f. No change.

g. ~~Placed under the prominent heading "Customers' Rights To Own And Provide Their Own Telephones, Other Terminal Equipment And New Inside Station Wiring," each directory shall provide the following information:~~

(1) ~~A customer has the right to provide and own terminal equipment and new inside station wiring.~~

(2) ~~A customer is not required to buy or lease terminal equipment from the telephone utility in order to receive service.~~

(3) ~~A customer is not required to use the services of the telephone utility for the installation or repair of new inside station wiring, telephone utility cable within or between two or more buildings on the same premises, or terminal equipment. Upon request, the telephone utility will provide limited technical information for the services and facilities listed above.~~

(4) ~~The charges for transmission services, connections, disconnections or service checks shall not be preferential due to the fact that telephones, or other terminal equipment or new inside station wiring are provided by the telephone utility or other suppliers.~~

(5) ~~A definition of terminal equipment.~~

h. ~~g. When additions or changes in plant, records or operations which will necessitate a large group of number changes are scheduled, reasonable notice shall be given to all customers.~~

UTILITIES DIVISION[199](cont'd)

ers so affected even though the additions or changes may be coincident with a directory issue.

i. h. For any exchange in which an extended area call can terminate, the terminating exchange telephone utility shall provide all recently compiled directory listings, except listings for nonpublished or nonlisted customers, to the utility from which the extended area call originates. The telephone utility shall provide the directory listing without charge, within 30 days of receipt of a written request for those listings.

j. i. In addition to the serving exchange directory listing required under 22.3(1)"a," upon the customer's request, an Iowa customer served by an out-of-state exchange shall be included in the directory list of one contiguous Iowa exchange of the customer's choice. Any charge for such Iowa listing shall be paid by the serving exchange.

ITEM 9. Rescind and reserve subrules **22.3(2)** to **22.3(4)**, **22.3(8)**, **22.3(9)** and **22.3(13)**.

ITEM 10. Amend subrule 22.4(1) as follows:

22.4(1) Customer information.

a. Each utility shall:

(1) Maintain up-to-date maps, plans, or records of its entire exchange systems, together with such other information as may be needed to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving prospective customers in its service territory. Maps shall show the physical location of central offices, all telephone lines showing size of cable, and other facilities in the utility's service territories. The maps shall include, at a minimum, service locations, any zones or corporate limits, which affect tariffed rates, roads, and county boundaries, and shall show county names. These maps shall be available for board examination at a location within Iowa during regular office hours and will be provided to the board upon request. These are not the same maps as the boundary maps described in subrule 22.20(3).

(2) Whenever a residential customer or prospective residential customer requests transmission service, the local exchange utility shall ask the residential customer or prospective residential customer that requests transmission service if the customer desires to be informed of the lowest priced service alternatives available and upon an affirmative response shall inform that customer of the lowest priced single and multiparty service alternative available at the relevant location.

(3) Prior to processing a request for new inside station wiring or new or additional terminal equipment, inform the requesting party of all of the following information: the customer's right to provide and own terminal equipment and new inside station wiring, the availability of information on new inside station wiring and the rate for transmission service and all other rates or charges that will be incurred after processing the request, both initially and on a continuing basis. The telephone utility shall also inform the party that the rate for transmission service is the same whether or not terminal equipment is provided by the customer.

(4) 3) Notify customers affected by a change in *regulated* rates or schedule classification.

(5) 4) Post notices in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for inspection and that customers have the right to own their own terminal equipment and that this will not affect the rate for transmission service. *If the utility provides*

access to its rates schedules and rules on its Web site, the notices should include the Web site address.

(6) 5) Furnish such additional information as the customer may reasonably request.

b. Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

All local exchange telephone utilities, and other telephone utilities that do their own billing, shall notify their customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, *the service may be subject to state regulation.* you You may request assistance from the *Iowa Utilities Division Board*, 350 Maple Street, Des Moines, Iowa 50319-0069, (515)281-3839 or toll-free (877)565-4450 or E-mail iubcustomer@iub.state.ia.us."

The bill insert or notice for nonrate-regulated telephone utilities shall also include the following statement: "If (utility name) does not resolve your complaint, the service may be subject to state regulation. You may contact the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll free (877)565-4450."

The bill insert or notice on the bill will be provided no less than annually. Any utility which does not use the standard form contained herein shall file its proposed form in its tariff for approval. A telephone utility which provides local exchange service and issues an annual directory shall publish the information set forth above in its directory in addition to a mailing.

ITEM 11. Amend subrule **22.4(2)**, introductory paragraph and paragraphs "a," "b," and "h," as follows:

22.4(2) Customer deposits. Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service. No deposit shall be required as a condition for service other than determined by application of either credit rating or deposit calculation criteria, or both, of the filed tariff. The deposit required shall be confirmed in writing to the customer not later than the time of the next billing. The confirmation shall, in separate columns, itemize deposits for toll and regulated services *local exchange service* and identify deposits for other *unregulated* services. The confirmation shall state that no deposit other than for regulated *local exchange* service is required to obtain basic local exchange service. The confirmation must also reflect the limits as to low-income customers in 199—subparagraph 39.3(2)"b"(4). Toll service does not include information service not regulated by the board.

a. Such deposit *Deposits for local exchange service* shall not be more in amount than the maximum charge for two months of local exchange service plus two months regulated toll service estimated from either past toll usage or customer estimated anticipated usage or exchange average toll usage for the same class and grade of service, or as may reasonably be required by the utility in cases involving service for short periods of time or special occasions. The deposit amounts must also reflect the limits as to low-income customers in 199—subparagraph 39.3(2)"b"(4).

UTILITIES DIVISION[199](cont'd)

b. Interest on customer deposits. Interest shall be paid by the rate-regulated utility to each customer required to make a deposit on deposits associated with regulated rates. ~~On or after April 21, 1994, rate-regulated utilities~~ Utilities shall compute interest on customer ~~such~~ deposits at 7.5 percent per annum, compounded annually. ~~Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question.~~ Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent, relative to an account treated as an uncollectible account, is the most recent date the account became delinquent.

h. A new or additional deposit for local exchange service may be required to cover the amount provided in "a" above when a deposit has been refunded or is found to be inadequate by virtue of increased toll or nonpayment ~~the customer's payment history demonstrates a deposit is or continues to be appropriate.~~ Written notice shall be mailed advising the customer of any new or additional deposit requirement. The customer shall have no less than 12 days from the date of mailing to comply. The new or additional deposit shall be payable at any of the utility's business offices or local authorized agents. An appropriate receipt shall be provided. ~~No written notice is required to be given of a deposit required as a prerequisite for commencing initial service.~~

If toll usage is abnormal, the tariff may provide for a new deposit or an increase in the deposit to guarantee payment of bill.

For customers with at least six consecutive months of service, abnormal usage of toll service is at least a 25 percent increase in monthly toll charges which amounts to at least \$20. To determine the increase, comparison shall be to the customer's average monthly toll during not less than the prior three months.

For customers with less than six consecutive months of service, abnormal usage of toll service is when one month's toll charges exceeds the deposit attributable to toll by at least 25 percent and this excess amounts to at least \$20.

In no instance will the utility demand a new or additional deposit in anticipation of increased toll usage.

i. A customer who fails to comply with the pay an initial deposit or a new or additional deposit requirements for local exchange service may be disconnected under the provisions of the written notice and 22.4(5).

ITEM 12. Amend subparagraph 22.4(3)"c"(4) as follows:

(4) Each disconnection notice shall state that access to regulated local exchange service shall not be denied for failure to pay for information service charges, or for deregulated toll charges services.

ITEM 13. Amend paragraph 22.4(3)"d" as follows:

d. Late payment charges by rate-regulated utilities for services associated with regulated rates. Where net and gross amounts are billed to customers, the difference between net and gross is a late payment charge and is valid only when it is part of a delinquent bill payment. A late payment charge shall not exceed 1.5 percent per month of the past-due amount. No collection fee may be levied in addition to this late payment charge. This does not prohibit cost-justified charges for disconnection and reconnection of service.

ITEM 14. Amend paragraph 22.4(3)"f" as follows:

1. Overcharges. The time period for which the utility is required to refund or credit the customer's bill shall not exceed five years unless otherwise ordered by the board. Refunds of \$25 or more shall be in the form of checks to current customers. Checks are to be issued to former customers where the refund exceeds \$10. Refunds to current customers of less than \$25 may be in the form of a bill credit. Refunds for regulated services local exchange service may not be applied to unpaid amounts for unregulated services.

ITEM 15. Amend subrule 22.4(6) as follows:

22.4(6) Medical emergency. ~~Notwithstanding any other provision of these rules, a telephone utility shall postpone the disconnection of service to a residential customer for a reasonable time, not in excess of 30 days, if the customer produces verification from a physician, or a public health or social services official, which states that telephone service is essential due to an existing medical emergency of the customer, a member of the customer's family or any permanent resident of the premises where service is rendered. This written verification shall identify the medical emergency and specify the circumstances. Initial verification may be by telephone if written verification is forwarded to the utility within five days. Disconnection of a residential customer shall be postponed 30 days if an existing medical emergency of the customer, a member of the customer's family, or any permanent resident of the premises where service is rendered would present an especial danger to the health of any permanent resident of the premises. Indicators of an especial danger to health include, but are not limited to: age; infirmity; mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstance which may indicate a severe or hazardous health situation. The telephone utility may require written verification of the especial danger to health by a physician or a public health official, including the name of the person endangered, and a statement that the person is a resident of the premises in question. Initial verification may be by telephone, but the telephone utility may require a written verification within 5 days of the verification of the especial health danger by the physician or a public health official, including the name of the person endangered and a statement that the person is a resident of the premises in question. If the service has been disconnected within 14 days prior to verification of illness for a qualifying resident, service shall be restored to that residence if a proper verification is thereafter made in accordance with the foregoing provisions. If the customer does not make payment during the 30-day period, the service is then subject to disconnection pursuant to subrule 22.4(5).~~

ITEM 16. Amend subrule 22.4(7), paragraphs "b" and "i," as follows:

b. Failure to pay for terminal equipment, new inside station wiring or other merchandise purchased from the utility.

i. Failure to pay for deregulated toll charges services.

ITEM 17. Amend subrule 22.5(13), paragraph "a," as follows:

a. No rate-regulated or non-rate-regulated local exchange utility or interexchange utility shall block terminating access to an individual number of a current residential or business subscriber, except as allowed in subrule 22.5(13). This subrule shall apply only to Iowa intrastate telephone service.

ITEM 18. Amend subrule 22.6(1) by adding new paragraph "c" as follows:

UTILITIES DIVISION[199](cont'd)

c. Ninety-nine percent of all customers provided service within 30 business days of the request or the customer-requested date, whichever is later. Compliance will be measured based on a three-month rolling average.

ITEM 19. Amend subrule **22.6(2)**, paragraphs “a,” “c,” and “d,” as follows:

a. During such period of time as a local exchange utility using its facilities to provide service may not be able to supply primary telephone service to prospective customers within five business days after the date applicant desires service, the telephone utility shall keep a record, by exchanges, showing the name and address of each applicant for service, the date of application, the date that service was requested, and the class and grade of service applied for, together with the reason for the inability to provide new service to the applicant.

c. When the local exchange utility using its facilities to provide service fails to provide primary local exchange service to any customer requesting service within 15 business days, it the *local exchange utility* shall provide the customer with an alternative form of service until primary local exchange service can be provided. The alternative form of service provided shall be that alternative that most closely equates to the capabilities of primary local exchange service *wireless telephone service unless the customer agrees otherwise*.

d. If an alternative form of primary service is provided, the local exchange utility is authorized to charge the customer the ~~tariff~~ *regular* rates (if applicable) for the alternative *primary service ordered*, if such ~~tariff~~ *regular* rates are less than the ~~tariff regulated~~ rate for primary local exchange service. Otherwise, the customer will be charged the ~~tariff regulated~~ rate for primary local exchange service. Where an alternative form of service is impossible to provide, the facilities-based local exchange utility shall waive all usual installation charges and, once primary local exchange service is provided, shall credit the customer's account in an amount equal to the pro-rata monthly primary local exchange charge for each day service was not provided.

ITEM 20. Amend rule 199—22.10(476) as follows:

199—22.10(476) Standards of competition Treatment of terminal equipment and inside station wiring. In areas of telephone service where customer provision of terminal equipment or new inside station wiring is permissible or required, a telephone utility's practices and actions shall be fair.

22.10(1) In order to promote fair treatment of customers, the telephone utility shall observe the following practices:

a. A telephone utility shall inform, in writing, all employees who may handle customer complaints, requests for information and communication services or equipment items which may be provided by customers, of the provisions of 22.3(6), 22.3(13), 22.4(1)“a”(2), 22.9(476), and 22.11(476).

b. Telephone utility personnel shall provide applicable rates and charges or any other information contained in the utility tariff, to answer inquiries as to the absence or presence of telephone utility equipment or services at a specified location, and to provide specifications which will permit customer-provided terminal equipment and new inside station wiring to gain access to the telephone network.

c. **22.10(1)** Upon the an individual customer's request, each telephone utility shall perform a service checkup to the demarcation point, without charge to the customer, and all costs for the service check up to the demarcation point will be assigned to the regulated services of the utility. However, as an exception, if the customer requests that the utility locate or

repair any difficulty on the customer's side of the demarcation point, all costs and charges, if any, associated with the service on both the customer's side and the utility's side of the demarcation point will be assigned to the deregulated services of the utility.

22.10(2) No change.

ITEM 21. Amend rule 199—22.11(476) as follows:

199—22.11(476) Existing and new inside Inside station wiring standards.

22.11(1) Treatment of existing and new inside station wiring.

a. On and after the transition date, all telephone utilities shall, if new inside station wiring is offered, provide, sell or lease the new inside station wiring as nonutility functions. The repair and maintenance of existing and new inside station wiring shall be nonutility functions on and after the transition date. No telephone utility shall on and after the transition date be required to provide, sell, lease, install, maintain or repair new inside station wiring or maintain or repair existing inside station wiring. The costs and revenues associated therewith shall not be included in a telephone utility's revenue requirement for ratemaking purposes.

b. Each telephone utility shall be responsible for making all connections at the protector or providing a facility to permit connection with new inside station wiring at the demarcation point. Nothing contained in these rules shall require or necessitate changes or modifications to telephone utility connections with existing inside station wiring.

c. Each telephone utility shall maintain its accounting records to separately account for those costs and revenues associated with utility functions and those costs and revenues associated with non-utility functions. Identifiable costs and associated overheads will be directly assigned; common and joint costs will be allocated on a consistent basis between utility and nonutility functions. Each telephone utility shall have the burden of proof to establish that directly assigned and allocated costs are recorded in the appropriate accounts.

d. Each telephone utility shall within 120 days after the effective date of these rules file a revised tariff which provides the utility will not be responsible for providing, repairing and maintaining new inside station wiring and repairing and maintaining existing inside station wiring.

22.11(2) Suppliers. New inside station wiring may be secured from a telephone utility if new inside station wiring is offered, or from any other supplier. Repair or maintenance for existing or new inside station wiring may be secured from a telephone utility, if repair or maintenance is offered, or from any other supplier.

22.11(3) Amortization of existing inside station wiring. Complete expensing of subaccounts 233:1 and 233:2 shall be accomplished through use of an amortization period commencing from the effective date of these rules. The amortization period shall be the depreciation period established in the last rate proceeding completed prior to January 1, 1982, for each telephone utility, or ten years, whichever is less.

Existing inside station wiring, upon expiration of the amortization period for the respective subaccounts, shall be excluded from the utility's regulated books of account. No telephone utility shall be permitted to sell existing inside station wiring during the amortization period for the respective subaccounts, or at any time thereafter. No telephone utility shall be permitted to lease existing inside station wiring after the expiration of the amortization period.

22.11(4) Amortization of existing telephone utility cable within or between two or more buildings on the same prem-

UTILITIES DIVISION[199](cont'd)

ises. That portion of existing outside plant which represents the undepreciated investment of the utility in telephone utility cable within or between two or more buildings on the same premises shall be amortized over the remaining life of the amortization period established by subrule 22.11(3), commencing from the effective date of these rules. Each telephone utility shall transfer the dollar amount which is to be amortized from the outside plant account 242.1 to the inside station wiring account 233 on the utility's transition date. Existing users of telephone utility cable within or between two or more buildings on the same premises on the transition date shall not be denied use in the future equal to their use on the transition date, unless that user requests a decrease in service after the transition date. Existing telephone utility cable within or between buildings on the same premises, upon expiration of the amortization period for the respective subaccounts, shall be excluded from the utility's regulated books of account.

22.11(5 I) Construction by user limitation. A user shall not be allowed to construct inside station wiring from a demarcation point or between two or more buildings on the same premises to obtain service from an exchange other than that by which *they the user* would normally be served, excluding users being provided adjacent exchange service or foreign exchange service as provided in a company's tariff. Existing inside wiring obtaining local exchange service within another exchange boundary shall be disconnected by the user within ten days after receipt of written notification from the local exchange company.

22.11(6 2) Standards applicable to existing and new inside station wiring. The following technical standards must be complied with:

a. Intrasystem wiring in customer-provided PBX and key telephone systems shall be in compliance with applicable registration standards promulgated by the Federal Communications Commission.

b. For use with telephone transmission service where only nonbutton or single button telephone stations and associated ancillary devices are utilized, new inside station wiring shall be in compliance with 47 CFR Part 68.

c. All existing and new inside station wiring must comply with applicable national, state or local building and electrical codes, including, National Electrical Code, as defined in NFPA No. 70-1978 (Article 800, Communications Circuits) 199—subrule 25.2(5); and accepted good engineering practice in the communication industry to ensure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and safety of persons and property.

d. Telephone utilities shall generally endeavor to answer any questions concerning the installation, repair, and maintenance of new inside station wiring and the repair and maintenance of existing inside station wiring. Upon request, telephone utilities shall distribute to their customers or other interested parties, explanatory printed materials on new inside station wiring, including an explanation of how compliance with the above standards can be accomplished.

ITEM 22. Amend subrule 22.12(1) as follows:

22.12(1) Construction of rule. This rule shall be construed in a manner consistent with its purpose to expedite informed consideration of tariff filings proposing rates by assuring *ensuring* the availability of relevant information on a standardized basis. Unless a waiver is granted prior to filing, this rule shall apply to all tariff filings by rate-regulated telephone utilities proposing rates, except the following:

a. Tariff filings of interexchange carriers not providing basic local service proposing new or changed intraLATA rates certified by an officer or employee with personal knowledge to be the same as the rates charged for the same deregulated services in the competitive interLATA market. These intraLATA tariff filings shall not be subject to the 20-day objection or request for docketing period in subrule 7.4(4) and shall be approved and made effective, subject to investigation or complaint, on an expedited basis by the board upon filing.

b. Tariff *tariff* filings of AOS utilities that propose rates at or below the corresponding rates for similar services of utilities whose rates have been approved by the board in a rate case or set in a market determined by the board to be competitive.

ITEM 23. Rescind and reserve subrule **22.13(1)**, paragraphs “a” and “b.”

ITEM 24. Amend rule 199—22.21(476) as follows:

199—22.21(476) Toll dialing patterns. All local exchange utilities may, and after June 19, 1994, shall use the dialing pattern, 0 or 1 plus ten digits, for all toll calls either within a single numbering plan area or from one numbering plan area to another.

ITEM 25. Amend subrule 22.23(2), introductory paragraph, as follows:

22.23(2) Prohibition of unauthorized changes in telecommunications service. *Unauthorized changes in telecommunications service, including but not limited to cramming and slamming, are prohibited.*

ITEM 26. Adopt new subparagraph **22.23(2)“a”**(5) as follows:

(5) For other changes in service resulting in additional charges to existing accounts only, a service provider shall establish a valid customer request for the change in service through maintenance of sufficient internal records. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification under the circumstances of the identification of the person requesting the change in service. Any of the three verification methods in 22.23(2)“a”(1) to (3) will also be acceptable. The burden will be on the telecommunications carrier to show that its internal records are adequate to verify the customer's request for the change in service.

ARC 4150B

VOLUNTEER SERVICE, IOWA COMMISSION ON[555]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 17A.3, Executive Order Number 48, and 2005 Iowa Acts, House File 478, the Iowa Commission on Volunteer Service hereby gives Notice of Intended Action to adopt new Chapter 7,

VOLUNTEER SERVICE, IOWA COMMISSION ON[555](cont'd)

"Retired and Senior Volunteer Program (RSVP)," Iowa Administrative Code.

These rules establish the procedures for the administration of the Retired and Senior Volunteer Program to ensure that grant awards are made in a fair and orderly manner.

Any interested person may make written suggestions or comments on these proposed rules on or before May 31, 2005. Such written materials should be directed to Adam Lounsbury, Iowa Commission on Volunteer Service, 200 East Grand, Des Moines, Iowa 50309; fax (515)242-4776. Persons wishing to convey their views orally should contact Adam Lounsbury at (515)242-5466.

Also, there will be a public hearing on June 1, 2005, at 8:30 a.m. at Iowa Department of Economic Development, Main Conference Room, Second Floor, 200 East Grand, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who will attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact Adam Lounsbury and advise of special needs.

These rules are intended to implement 2005 Iowa Acts, House File 478, section 2(3)"i."

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following **new** chapter is proposed.

CHAPTER 7
RETIRED AND SENIOR
VOLUNTEER PROGRAM (RSVP)

555—7.1(81GA,HF478) Purpose and program description. The purpose of the retired and senior volunteer program (RSVP) is to identify and address priority community needs through the mobilization of adult volunteers aged 55 and over, thereby recognizing and using the competence, wisdom and experience of elders for the benefit of all Iowans. RSVP grants will give support to each RSVP project serving Iowa and provide discretionary funding on a competitive basis for RSVP project expansion. The commission provides two types of RSVP grants:

7.1(1) RSVP grant. Each RSVP project which has a current memorandum of agreement to operate an RSVP project from the Corporation for National and Community Service (the federal domestic volunteer agency) is to be allocated a share of state funds appropriated for distribution. Each RSVP project director shall submit to the commission a budget describing how the project will expend the grant and other information as requested by the commission.

7.1(2) State-developed RSVP project grant. From state funds appropriated by the legislature, RSVP projects will be developed that are consistent with the goals of the Corporation for National and Community Service, the RSVP and the commission. After a review by the RSVP committee pursuant to subrule 7.4(3), grants will be awarded on a competitive basis by the commission and the Corporation for National and Community Service to local organizations or groups to initiate new RSVP projects.

555—7.2(81GA,HF478) Applications. Appropriate forms and applications for each grant are available from the com-

mission or the Corporation for National and Community Service.

555—7.3(81GA,HF478) Grant criteria. To respond to funding priorities, as funds are made available, the executive director of the commission and the state director of the Corporation for National and Community Service will coordinate in establishing criteria for the awarding of state-developed funds. As a minimum, the criteria will contain the following:

1. Goals and objectives of the project;
2. The qualifications of the applicant to manage funds;
3. Letters of local support verifying coordination and cooperation and the need for volunteers;
4. Total project budget;
5. Evidence of ability to submit timely and accurate reports;
6. Description and time line of planned activities;
7. Agreement to develop for the project an advisory council whose membership should include minority members, RSVP volunteers, and representatives from the public and private sectors;
8. Description of the applicant organization, including staffing pattern; and
9. Documentation of the applicant's ability to provide the required local match.

555—7.4(81GA,HF478) Application process for new state-developed project grants. Following are the procedures to request applications and award funds:

7.4(1) The commission and the Corporation for National and Community Service shall issue a request for proposals containing project criteria and application forms for the appropriate fiscal year.

7.4(2) The applicant shall submit the completed application to the commission according to the time line identified in the request for proposals.

7.4(3) Applications submitted will be reviewed by the RSVP committee, which is composed of up to two representatives each of the Corporation for National and Community Service, the Iowa commission on volunteer service, and the Iowa RSVP Directors Association. Using the criteria in rule 555—7.3(81GA,HF478), the committee will review the applications for appropriateness and to determine the merit of the project.

7.4(4) Applicants whose projects have been selected for funding shall be notified by the commission.

7.4(5) The commission will contract with the approved applicant(s) for the appropriate fiscal year, July 1 to June 30.

555—7.5(81GA,HF478) Administration of grants. The commission shall prepare contractual agreements for the grants.

7.5(1) This contract shall be executed by the executive director of the commission and the duly authorized official of the local RSVP project.

7.5(2) The contract shall include due dates and the process for the submission of project reports and financial reports.

7.5(3) Reporting. All grant recipients shall submit biannually progress and financial reports to the Corporation for National and Community Service that shall be provided to the commission.

555—7.6(81GA,HF478) Reversion of funds. Grant funds not expended by the project by June 30 shall revert to the commission.

These rules are intended to implement 2005 Iowa Acts, House File 478, section 2(3)"i."

ARC 4138B

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 249A.4 and 249A.20A(10), the Department of Human Services amends Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments complete the implementation of the Medicaid preferred drug list initiated by rule making published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3154B**. These amendments:

- Rescind provisions on drug prior authorization that were retained to cover the transition from the previous authorization system to use of the preferred drug list.

- Add nonprescription drugs designated as preferred drugs to the list of nonprescription drugs payable under Medicaid.

- Simplify and clarify the rule on drug pricing. Effective with the implementation of the preferred drug list on January 15, 2005, brand-name drugs are covered only if they are preferred or if prior approval has been received. Therefore, prior approval or certification of medical necessity is not required again to exempt brand-name drugs from the maximum allowable cost or the state maximum allowable cost.

These amendments do not provide for waivers in specified situations. Waivers may be requested under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments April 13, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments implement Iowa Code section 249A.20A, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by Iowa Code section 249A.20A.

These amendments are also published herein under Notice of Intended Action as **ARC 4134B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.20A.

These amendments became effective May 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend subrule **78.1(2)** as follows:

Rescind paragraph "**a**," subparagraph (3), and adopt the following **new** subparagraph in lieu thereof:

(3) Prior authorization is required as specified in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A. For drugs requiring prior authorization, reimbursement will be made for a 72-hour supply dispensed in an emergency when a prior authorization request cannot be submitted and a response received within 24 hours, such as after working hours or on weekends.

Amend paragraph "**f**," subparagraph (1), as follows:

(1) The following nonprescription drugs are payable, and may be subject to the prior authorization requirements stated below and as specified in the preferred drug list published by the department pursuant to Iowa Code Supplement section 249A.20A:

Acetaminophen tablets 325 mg, 500 mg
 Acetaminophen elixir 120 mg/5 ml
 Acetaminophen elixir 160 mg/5 ml
 Acetaminophen solution 100 mg/ml
 Acetaminophen suppositories 120 mg
 Artificial tears ophthalmic solution
 Artificial tears ophthalmic ointment
 Aspirin tablets 325 mg, 650 mg, 81 mg (chewable)
 Aspirin tablets, enteric coated 325 mg, 650 mg, 81 mg
 Aspirin tablets, buffered 325 mg
 Bacitracin ointment 500 units/gm
 Benzoyl peroxide 5%, cleanser, lotion, cream, gel
 Benzoyl peroxide 10%, cleanser, lotion, cream, gel
 Calcium carbonate chewable tablets 1250 mg (500 mg elemental calcium)
 Calcium carbonate suspension 1250 mg/5 ml
 Calcium carbonate tablets 600 mg
 Calcium carbonate-vitamin D tablets 500 mg-200 units
 Calcium carbonate-vitamin D tablets 600 mg-200 units
 Calcium citrate tablets 950 mg (200 mg elemental calcium)
 Calcium citrate-vitamin D tablets 1500 mg-200 units
 Calcium gluconate tablets 650 mg
 Calcium lactate tablets 650 mg
 Chlorpheniramine maleate tablets 4 mg
 Clotrimazole vaginal cream 1%
 Diphenhydramine hydrochloride capsules 25 mg
 Diphenhydramine hydrochloride liquid 6.25 mg/5 ml,
 Diphenhydramine hydrochloride elixir, liquid and syrup 12.5 mg/5 ml
 Ferrous sulfate tablets 300 mg, 325 mg
 Ferrous sulfate elixir 220 mg/5 ml
 Ferrous sulfate drops 75 mg/0.6 ml
 Ferrous gluconate tablets 300 mg, 325 mg
 Ferrous gluconate elixir 300 mg/5 ml
 Ferrous fumarate tablets 300 mg, 325 mg
 Guaifenesin 100 mg/5 ml with dextromethorphan 10 mg/5 ml liquid
 Ibuprofen suspension 100 mg/5ml
 Ibuprofen tablets 200 mg
 Insulin
 Lactic acid (ammonium lactate) lotion 12%
 Loperamide hydrochloride liquid 1 mg/5 ml
 Loperamide hydrochloride tablets 2 mg
 Loratadine tablets 10 mg
 Magnesium oxide capsule 140 mg (85 mg elemental magnesium)
 Magnesium oxide tablet 400 mg
 Meclizine hydrochloride tablets 12.5 mg, 25 mg oral and chewable
 Miconazole nitrate cream 2% topical and vaginal
 Miconazole nitrate vaginal suppositories, 100 mg
 Multiple vitamin and mineral products specifically formulated and recommended for use as a dietary supplement during pregnancy and lactation
 Multiple vitamin and mineral products with prior authorization under the conditions specified in subparagraph 78.1(2)"a"(3)
 Neomycin-bacitracin-polymyxin ointment

HUMAN SERVICES DEPARTMENT[441](cont'd)

Niacin (nicotinic acid) tablets 25 mg, 50 mg, 100 mg, 250 mg, 500 mg

Omeprazole magnesium delayed-release tablets 20 mg (base equivalent)

Pediatric oral electrolyte solutions

Permethrin liquid 1%

Pseudoephedrine hydrochloride tablets 30 mg, 60 mg

Pseudoephedrine hydrochloride liquid 30 mg/5 ml

Pyrethrins-piperonyl butoxide liquid 0.33-4%

Pyrethrins-piperonyl butoxide shampoo 0.3-3%

Pyrethrins-piperonyl butoxide shampoo 0.33-4%

Salicylic acid liquid 17%

Senna tablets 187 mg

Sennosides-docusate sodium tablets 8.6 mg-50 mg

Sennosides granules 15 mg/5 ml

Sennosides tablets 187 mg

~~Senokot granules, 326 mg/tsp for children aged 20 and under~~

~~Senokot tablets, 187 mg for children aged 20 and under~~

Sodium bicarbonate tablet 325 mg

Sodium bicarbonate tablet 650 mg

Sodium chloride hypertonic ophthalmic ointment 5%

Sodium chloride hypertonic ophthalmic solution 5%

Sodium chloride solution 0.9% for inhalation with metered dispensing valve 90 ml, 240 ml

Tolnaftate 1% cream, solution, powder

Other nonprescription drugs listed as preferred in the preferred drug list published by the department pursuant to Iowa Code Supplement section 249A.20A.

ITEM 2. Amend subrule **78.28(1)** as follows:

Rescind paragraph “a” and adopt the following **new** paragraph in lieu thereof:

a. Drugs require prior approval as specified in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A. Prior authorization will be granted for 12-month periods unless otherwise specified in the preferred drug list. For drugs requiring prior authorization, reimbursement will be made for a 72-hour supply dispensed in an emergency when a prior authorization request cannot be submitted and a response received within 24 hours, such as after working hours or on weekends.

Rescind and reserve paragraphs “b” and “d.”

ITEM 3. Amend subrule 79.1(8) as follows:

Amend the introductory paragraph as follows:

79.1(8) Drugs. The amount of payment shall be based on several factors, subject to the upper limits in 42 CFR 447.331-332 as amended to April 18, 2002. *The Medicaid program relies on information published by First Data Bank to classify drugs as brand-name or generic.*

Amend paragraph “a,” introductory paragraph, as follows:

a. ~~Subject to paragraph “b,”~~ *Effective January 15, 2005, reimbursement for covered generic prescription drugs shall be the lowest of the following, as of the date of dispensing:*

Rescind paragraph “b” and adopt the following **new** paragraph in lieu thereof:

b. Effective January 15, 2005, reimbursement for covered brand prescription drugs shall be the lowest of the following, as of the date of dispensing:

(1) The estimated acquisition cost, defined as the average wholesale price as published by First Data Bank less 12 percent, plus the professional dispensing fee specified in paragraph “g.”

(2) The submitted charge, representing the provider’s usual and customary charge for the drug.

[Filed Emergency 4/15/05, effective 5/1/05]

[Published 5/11/05]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/11/05.

ARC 4135B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44, the Department of Human Services amends Chapter 150, “Purchase of Service,” and Chapter 152, “Contracting,” rescinds Chapter 182, “Family-Centered Services,” and adopts a new Chapter 182 with the same title, and amends Chapter 185, “Rehabilitative Treatment Services,” Iowa Administrative Code.

These amendments implement flexible family-centered service components as part of the legislatively mandated redesign of the child welfare services system through:

- A new Chapter 182, “Family-Centered Services,” developed to describe the new, more flexible family-centered service components that will be available to support children and families.

- Changes to Chapters 150, 152, and 185 to set the contracting requirements necessary to provide additional service flexibility in the family-centered program.

Under these amendments, Department staff will be able to purchase the following new service components:

- Family team meeting facilitation, which will increase the Department’s capacity to use the family team approach to case planning, a method that promotes more effective engagement and assessment of families in child welfare services and leads to the design of more effective service plans.

- Parental counseling and education, which will use a mixture of counseling and educational instruction techniques to work with parents or caretaker relatives to deal with social, emotional, and behavioral issues or gaps in parenting skills that prevent them from adequately meeting the needs of children.

- Relative home studies, which will provide a funding source for evaluation of kinship placements as an alternative to placement in foster care.

- Community resource procurement, which will reimburse providers for their time spent researching and organizing the community services, supports, and goods needed by a family to provide for a child’s safety and well-being, such as locating a safe residence for a homeless family.

These amendments also create a flexible family support fund, which will allow providers to receive state reimbursement when they purchase approved goods or support for a family, such as food, furniture, or short-term rent assistance, in order for the family to safely provide for their children.

Under these amendments:

- All family-centered services are available when the Department has opened a child welfare service case due to an allegation of child abuse or neglect or due to the child’s adjudication as a “child in need of assistance.”

- Supervision, family team meeting facilitation, relative home study, community resource procurement, and flexible family support fund services are available when the Department has initiated a child protective assessment on a child or

HUMAN SERVICES DEPARTMENT[441](cont'd)

an order has been issued setting the date for an adjudication hearing or a prehearing conference on a "child in need of assistance" petition.

- Supervision and nonrehabilitative treatment services are available when Juvenile Court Services has opened a case on a youth who has been adjudicated delinquent or is the subject of a consent decree.

Voluntary requests for services will not establish eligibility. Families that are already receiving services but that do not qualify under the new rules will be allowed a two-month transition period.

Providers that have contracts for purchase of social services or rehabilitative treatment or supportive services will add these new services to their existing contracts. Providers that wish to offer only the new services of family team meeting facilitation, relative home studies, community resource procurement, or flexible family support fund may enter into an individual service contract with the state pursuant to rules of the Department of Administrative Services.

These amendments establish statewide fixed reimbursement rates for family team meeting facilitation, community resource procurement, and relative home studies based on review of available data. Rates for parental counseling and education will be an average of rates for therapy and counseling and skill development services, based either on the lowest rates currently in effect for the provider in each category or on the weighted average rates for providers that do not currently have a rate in effect. This approach makes implementation less complicated and removes the burden on providers to submit cost reports.

The goal of these amendments is to increase purchasing flexibility and add new types of services that support the Department's model of child welfare practice and better meet the needs of the population of children and families being served in the child welfare system. Provider documentation requirements have been streamlined where possible.

These amendments do not provide for waivers in specified situations. Individuals who believe themselves disadvantaged by the rules may request a waiver under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments April 13, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments implement 2003 Iowa Acts, chapter 178, section 44, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2003 Iowa Acts, chapter 178, section 44.

These amendments are also published herein under Notice of Intended Action as **ARC 4133B** to allow for public comment.

These amendments are intended to implement Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44.

These amendments became effective May 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Strike the phrase "regional administrator" and insert in lieu thereof "service area manager" wherever the phrase appears in paragraph **150.3(1)"c"**; subrule **150.3(3)**,

paragraphs **"g," "h,"** and **"i"**; subrule **150.3(9)**, paragraphs **"b"** and **"c"**; subrule **150.5(1)**, paragraphs **"b," "c,"** and **"d"**; subrule **150.5(6)**, paragraphs **"b"** and **"c"**; subrule **150.7(1)**, introductory paragraph; and paragraph **150.7(2)"a."**

ITEM 2. Strike the word "region" and insert in lieu thereof "service area" wherever the word appears in paragraph **150.3(5)"d,"** subrule **150.3(8)**, paragraph **150.5(1)"b,"** and subrules **152.23(1)** and **152.23(3)**.

ITEM 3. Strike the phrase "human services area administrator" and insert in lieu thereof "service area manager" wherever the phrase appears in subparagraphs **150.3(1)"d"(2)** and **150.7(1)"a"(2)** and paragraph **152.22(4)"b."**

ITEM 4. Further amend rule 441—150.3(234) as follows:

Amend paragraph **150.3(1)"b"** as follows:

b. Initial contact. The initial contact should be between the potential provider and the ~~regional administrator~~ *service area manager* for the ~~region~~ *service area* in which the provider's headquarters is located. In the case of out-of-state providers, this contact can be with the ~~regional administrator~~ *service area manager* for either the closest ~~region~~ *service area* or the ~~region~~ *service area* initiating the contact. ~~The Purchase of Service Provider Handbook shall be given to the provider at~~ At the beginning of the process of developing a contract, ~~the bureau of purchased services shall give the provider:~~

(1) *Information about the contracting process; and*

(2) *Instructions on how to access the Purchase of Service Provider Handbook electronically.*

Rescind and reserve subparagraph **150.3(1)"d"(3)**.

Amend subparagraph **150.3(1)"e"(2)** as follows:

(2) The service is not in the social services block grant plan for the ~~regions or~~ counties to be served by the program.

Amend paragraph **150.3(2)"c"** as follows:

c. Contract renewal. A joint decision to pursue renewal of the contract must be made at least 60 days ~~prior to~~ *before* the expiration date.

(1) Each contract shall be evaluated. ~~The department shall take the results of the evaluation shall be taken into consideration in making the decision on renewal prior to renewal.~~ This evaluation may involve use of the Monitoring and Evaluation Review Guide, Form 470-2571, or other evaluation tools specified in the contract.

(2) Desk Audit for Title VI and Section 504 *Civil Rights Contract Compliance*, Form 470-2215, shall be completed by the provider.

Amend paragraph **150.3(3)"j,"** introductory paragraph, as follows:

j. Client reports. The provider shall maintain the following client records, *except when providing services as described in 441—Chapter 182, for which the requirements in 441—subrules 185.10(4), 185.10(5) and 185.10(6) shall apply, as specified in rule 441—182.7(234):*

Amend paragraph **150.3(3)"m"** as follows:

m. Maintenance of client records. Records for clients served through a purchase of service contract must be retained by the provider for a period of three years after service to the client terminates, *except for services described in 441—Chapter 182, for which the requirements of rule 441—182.7(234) shall apply.*

Amend paragraph **150.3(3)"p"** as follows:

p. Certification by department of transportation.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) ~~Each service~~ *If the provider of furnishes public transit service as defined in 761—910.1(324A), the provider shall annually submit Form 020107, Certification Application for Coordination of Public Transit Services, and a copy of "Certificate of Insurance" (an ACORD form or similar or self-insurance documentation) to the applicable project manager annually showing information regarding compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 324A and department of transportation rules in 761—Chapter 910. This information shall include:*

1. *Form 020107, Certification Application for Coordination of Public Transit Services, which the project manager shall submit to the department of transportation; and*

2. *A copy of an ACORD Certificate of Insurance or similar self-insurance documentation, as applicable.*

(2) *If a provider believes it does not furnish public transit service as defined in 761—910.1(324A) and therefore is exempt from the requirements in subparagraph (1), the provider shall submit Form 020107 with only Section 1 completed when the provider enters into a new contract.*

(3) *If a provider that has furnished public transit service as defined in 761—910.1(324A) ceases to do so, the provider becomes exempt from the requirements in subparagraph (1).*

(4) *If an exempt provider begins to furnish public transit service as defined in 761—910.1(324A), the provider shall inform the project manager within 30 days of the change and shall adhere to the procedures in subparagraph (1).*

(5) ~~Failure to provide~~ *of the provider to cooperate in obtaining or providing the required documentation for compliance or exemption is grounds for denial or termination of the contract.*

Amend subrule 150.3(4) as follows:

Amend the introductory paragraph as follows:

150.3(4) Establishment of rates. The Financial and Statistical Report for Purchase of Service Contracts, Form 470-0664, is the basis for establishing the rates to be paid to all providers under an Iowa Purchase of Social Services Agency Contract, Form 470-0628, *except as provided below.*

Adopt **new** paragraph "c" as follows:

c. Family-centered flexible supportive services. Rates for community resource procurement, family team meeting facilitation, and relative home study services, as described in rule 441—182.2(234), shall be:

(1) Established in accordance with 441—subrule 185.112(14); and

(2) Subject to the provisions of 441—subrules 152.2(23) and 152.2(25).

Amend subrule **150.3(6)** as follows:

Amend paragraph "a" as follows:

a. Program eligibility. To receive services through the purchase of service system, clients shall be determined eligible and be formally referred by the department.

(1) The department shall not make payment for services provided ~~prior to~~ before the client's application, eligibility determination, and referral. See "b" below for an exception to this rule requirement.

(2) ~~The Except as provided in paragraph "c," the department shall use the following forms shall be used by the department to authorize services:~~

1. Form 470-0622, Referral of Client for Purchase of Social Services.

2. Form 470-0719, Placement Agreement: Child Placing or Child Caring Agency (Provider).

Adopt **new** paragraph "c" as follows:

c. Family-centered services. For family-centered services, the provisions in rules 441—182.3(234) and 441—182.4(234) relating to approval, authorization, and referral shall apply.

ITEM 5. Further amend rule 441—150.5(234) as follows:

Amend subparagraph **150.5(1)"d"(2)**, fourth unnumbered paragraph, as follows:

~~Director Administrator~~ of the division of ~~management and budget fiscal management~~ within two weeks from receipt.

Amend subrule 150.5(5), introductory paragraph, as follows:

150.5(5) Billing procedures. At the end of each month, or as otherwise provided in the contract, the contractor shall prepare a claim on Form 07-350 GAX, ~~Purchase Order/ Payment Voucher~~ General Accounting Expenditure, for expenses for which reimbursement is permitted in the contract. The claim ~~is to~~ shall be sent to the regional office of the department that administers the contract for approval and forwarding for payment.

ITEM 6. Further amend subrule 150.7(1) by rescinding and reserving subparagraph **150.7(1)"a"(3)**.

ITEM 7. Amend rule 441—152.2(234) as follows:

Amend subrule 152.2(16) as follows:

152.2(16) Maintenance of client records. Records for clients served through a Rehabilitative Treatment and Supportive Services Contract, Form 470-3052, shall be retained by the provider for a period of five years after service to the client terminates. Client records for rehabilitative treatment and supportive services shall comply with the requirements set forth at 441—subrule 185.10(6) and, as applicable, 441—subrule 156.7(2) and 441—~~subrule 182.5(5)~~ rule 441—182.7(234), as applicable to the specific services provided.

Amend subrule 152.2(19) as follows:

152.2(19) Certification by department of transportation.

a. ~~Each service~~ *If the provider of furnishes public transit services service as defined in 761—910.1(324A), the provider shall annually submit Form 020107, Certification Application for Coordination of Public Transit Services, and a copy of "Certificate of Insurance" (an ACORD form or similar or self-insurance documentation) to the applicable regional office annually showing project manager information regarding compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 324A and department of transportation rules in 761—Chapter 910. This information shall include:*

(1) *Form 020107, Certification Application for Coordination of Public Transit Services, which the project manager shall submit to the department of transportation; and*

(2) *A copy of an ACORD Certificate of Insurance or similar self-insurance documentation, as applicable.*

b. *If a provider believes it does not furnish public transit service as defined in 761—910.1(324A) and therefore is exempt from the requirements in paragraph "a," the provider shall submit Form 020107 with only Section 1 completed when the provider enters into a new contract.*

c. *If a provider that has furnished public transit service as defined in 761—910.1(324A) ceases to do so, the provider becomes exempt from the requirements in paragraph "a."*

d. *If an exempt provider begins to furnish public transit service as defined in 761—910.1(324A), the provider shall inform the project manager within 30 days of the change and shall adhere to the procedures in paragraph "a."*

HUMAN SERVICES DEPARTMENT[441](cont'd)

e. Failure of the provider to cooperate in obtaining or providing the required documentation of compliance or exemption is grounds for denial or termination of the contract.

Amend subrule **152.2(26)**, paragraphs “a” and “b,” as follows:

a. Providers shall submit to the project manager the following forms at the time of submission of the initial contract for monitoring of compliance with the requirements set forth at 152.2(4), 152.2(5), 152.2(6) and 152.2(8): Equal Opportunity Review, Form 470-0148, and, as applicable, Accessibility Checklist, Form 470-0149, and Section 504 Transition Plan: Structural Accessibility, Form 470-0150.

(1) The provider shall submit the Desk Audit for Title VI and Section 504 Civil Rights Contract Compliance, Form 470-2215, shall be submitted to the project manager annually thereafter.

(2) The project manager shall submit the required forms to the department diversity programs unit.

b. The bureau of equal opportunity diversity programs unit shall review the forms. If the bureau unit finds areas of noncompliance, the bureau unit shall notify the provider. The provider shall develop a plan of corrective action addressing each area of noncompliance. The corrective action plan shall include timelines for implementation and shall be submitted to the department for approval.

ITEM 8. Further amend rule 441—152.22(234) as follows:

Amend subrules 152.22(2) and 152.22(3) as follows:

152.22(2) Initial contact. The initial contact shall be between the potential provider and the regional supervisor bureau of purchase of service for the region in which the provider's headquarters is located purchased services. In the case of out-of-state providers, this contact can be with the regional supervisor for either the closest region or the region initiating the contact.

a. The “Handbook for Providers of Rehabilitative Treatment and Supportive Services” shall be given to the provider at the beginning of the contract development process, the bureau shall give the potential provider:

(1) Information about the contracting process; and

(2) Instructions on how to access the Rehabilitative Treatment and Supportive Services Provider Handbook electronically.

b. The provider shall sign Form 470-3057, Verification of Receipt, at the end of the contract development process to verify receipt of information on how to access the “Handbook.”

152.22(3) Contract proposal development. When the regional supervisor for purchase bureau of service purchased services determines that a new contract is to be developed, a project manager shall be assigned to assist in contract development and processing.

a. The project manager shall assist the provider in the completion of the contract proposal and required fiscal information.

b. Form 470-3051, Rehabilitative Treatment and Supportive Services Contract Face Sheet, and Form 470-3404, Rehabilitative Treatment and Supportive Services Negotiated Rate Establishment Attachment Amendment, shall be completed at the same time as Form 470-3052, Rehabilitative Treatment and Supportive Services Contract, or Form 470-3053, Amendment of the to Rehabilitative Treatment and Supportive Services Contract, is prepared.

Rescind and reserve paragraph **152.22(4)“c.”**

ITEM 9. Rescind 441—Chapter 182 and adopt the following **new** chapter in lieu thereof:

CHAPTER 182

FAMILY-CENTERED SERVICES

PREAMBLE

Family-centered services are designed to treat child abuse, neglect, and delinquency; to promote the safety, permanency, and well-being of children who have been abused or neglected; to prevent out-of-home placements of children; to reunite families whose children have been placed outside the home; or to help children who cannot return to their own homes work toward achieving another planned permanent living arrangement.

The family-centered service program recognizes the wide variety of family needs and allows for varying scope, frequency, and intensity of services to provide the least restrictive response to each child and family receiving services. Service approaches are designed in collaboration with families, build on existing strengths of children and families, and are tailored to meet the identified concerns of families and children.

This chapter defines and structures supportive services in the family-centered service program. These rules set the eligibility criteria, application and approval procedures, requirements for service provision, reimbursement methodology, provider qualifications, and service termination and appeal procedures for the program. Family-centered rehabilitative treatment service components are addressed in 441—Chapter 185.

441—182.1(234) Definitions.

“Case permanency plan” means the written service plan document. Department case permanency plans shall be developed pursuant to rule 441—130.7(234).

“Child” means a person under 18 years of age.

“Department” means the Iowa department of human services.

“Department worker” means the worker who is responsible for opening a service case.

“Family members,” for purposes of child welfare service delivery, may include the following:

1. The natural or adoptive parents, stepparents and children who reside in the same household.

2. A child who lives with an adult related to the child within the fourth degree of consanguinity and the adult relatives within the fourth degree of consanguinity in the child's household who are responsible for the child's supervision. Relatives within the fourth degree of consanguinity include: full or half siblings, aunts, uncles, great-aunts, great-uncles, nieces, great-nieces, nephews, great-nephews, grandparents, great-grandparents, great-great-grandparents, and first cousins.

3. A child who lives alone or resides with a person or persons not legally responsible for the child's support.

“Family team” means people identified by the child or family as collectively possessing the technical skills, knowledge of the family, authority, and access to resources necessary to organize effective services that build on the strengths and meet the needs of the child or family.

“Family team meeting” means a gathering of family members and extended family, friends, providers, the department worker, community professionals, and other interested people who plan for the safety, permanency, and well-being of a child or family through development and review of an individualized case permanency plan. Family team meetings are intended to enhance the core casework functions of fami-

HUMAN SERVICES DEPARTMENT[441](cont'd)

ly engagement, assessment, service planning, monitoring, and coordination.

“Nonrehabilitative treatment need” means the child has a protective or permanency need for which the child has no identified rehabilitative behavioral health treatment need. Services to address a nonrehabilitative treatment need may be directed at a family member to meet the child’s safety, treatment, or permanency need.

“Provider” means any natural person, company, firm, association, or other legal entity under contract with the department pursuant to 11—Chapters 106 and 107 or 441—Chapters 150 or 152 to provide the services described in this chapter.

“Referral worker” means the department worker or juvenile court officer who is responsible for providing case management, including:

1. Assessing and identifying individual and family strengths and needs.
2. Developing a case permanency plan to provide appropriate supports and services.
3. Implementing the case permanency plan.
4. Coordinating and monitoring the provision of services.
5. Evaluating client progress and the case permanency plan to determine continued need for services.

“Rehabilitative treatment need” means a medical-behavioral health need of a child with a deficit in function or skill that the child lost or never gained as a result of interference in the normal maturational and learning process due to child or parental dysfunction. The child must have the capability to benefit from the rehabilitative treatment services.

“Service authorization” means the process of service need determination and authorization of scope, amount, and duration of services.

“Supportive services” in the family-centered program means the following service components:

1. Community resource procurement.
2. Family team meeting facilitation.
3. Flexible family support fund.
4. Parental counseling and education.
5. Relative home studies and home study updates.
6. Respite services for MR/DD children as defined in 441—Chapter 180.
7. Supervision.

“Treatment plan” means a written, goal-directed plan of service developed for a child and family by the provider in compliance with 441—subrules 185.10(4) and 185.10(5).

441—182.2(234) Available services. Family-centered services use a flexible and comprehensive approach to address the needs of individual family members within the context of the entire family. Services are adapted to the individual needs of children and families in terms of scope, intensity, and duration and are intended to improve the child’s safety, permanency, and well-being. The department may approve eligible children and families for one or more of the following service components:

182.2(1) Supervision. Supervision services are activities undertaken to provide the structured monitoring and behavioral oversight needed by a child or the child’s family to achieve or maintain the child’s safety, permanency, and well-being.

- a. Service activities may include the following:
 - (1) Behavioral monitoring;
 - (2) Inspection and monitoring of the home environment of a child’s parent or other relative to evaluate its safety and suitability;

- (3) Oversight of a family’s participation in services;
- (4) Monitoring of a child’s ability to adjust within the community; and

(5) Guidance for family members on how to improve their adjustment.

b. Supervision services may include a combination of:

- (1) Direct contact with the child or an adult family member responsible for the child; and

(2) Indirect behavioral monitoring through contacts by telephone with the child or adult family members who have caretaking responsibility for the child. With the approval of the referring worker, telephone contacts may be used to monitor the child’s whereabouts and adjustment or to respond to family crises. Telephone contacts are limited to 60 minutes per calendar month of service.

182.2(2) Family team meeting facilitation. Family team meeting facilitation includes activities undertaken to conduct a family team meeting for a family with a child welfare service case. A person who meets department requirements to be an approved facilitator shall provide the service. Expected activities include:

- a. Responding to a referral for facilitation;
- b. Working with the family and others to identify participants in the family team meeting and prepare them for the meeting;
- c. Arranging the meeting location;
- d. Sending meeting invitations;
- e. Conducting the family team meeting;
- f. Recording key issues, discussion topics, and decisions developed during the meeting; and
- g. Timely preparation and submission to the department of postmeeting notes that can be used in the development of the case permanency plan, using Form 470-4126, Family Team Meeting Facilitation Notes.

182.2(3) Rehabilitative treatment. Rehabilitative treatment services address the specific medical and behavioral health needs of a child. Rehabilitative treatment services are designed to restore a function or skill that the child lost or never gained as a result of interference in the normal maturational and learning process due to child or parental dysfunction. The child must have the capability to learn the function or skill.

a. Family-centered rehabilitative treatment service components include restorative living skills development, family skill development, social skills development, therapy and counseling, and psychosocial evaluation, as specified in 441—Chapter 185, Division II.

b. The provisions of this chapter do not apply to family-centered rehabilitative treatment services. Eligibility and provider standards for rehabilitative treatment services are specified in 441—Chapter 185, Division I. Establishment of rates, billing and payment procedures, and overpayment provisions are specified in 441—Chapter 185, Divisions VI, VII, and VIII, respectively.

182.2(4) Nonrehabilitative treatment. Nonrehabilitative treatment services address a child’s needs related to child abuse or neglect that are not being met through rehabilitative treatment services. Family-centered nonrehabilitative service components include:

- a. Skill development.
- b. Therapy and counseling.

182.2(5) Parental counseling and education. Parental counseling and education services are directed to addressing behavioral and emotional issues of a child’s parent or of the adult relative with whom a child resides that are identified by

HUMAN SERVICES DEPARTMENT[441](cont'd)

the department worker as presenting significant barriers to the safety, stability, permanency, or well-being of the child.

a. Services represent a blend of counseling and educational intervention techniques. Service activities may include providing instruction or education on appropriate parenting, family structure, social relationships, and household management techniques to enhance a child's safety, stability, permanency, and well-being.

b. Services may be provided in an individual or group setting.

182.2(6) Relative home study and home study update. Relative home study services are used to gather information in order to:

a. Assess the suitability as a placement resource of the home environment of a relative (including the noncustodial parent) of a specific child who is involved with the department as a result of a report of child abuse or neglect or a juvenile court action;

b. Complete a relative home study in response to a request received through the interstate compact on the placement of children (Iowa Code chapter 232, division IX); or

c. Gather information necessary to update a home study that was completed on a relative household within one year from the date of the current referral (a "relative home study update").

182.2(7) Community resource procurement. Community resource procurement services are focused on arranging or coordinating the delivery of community supports or tangible goods identified as necessary for a family to achieve the outcomes of the family's case permanency plan. At the department's direction, the service provider undertakes activities to identify and secure tangible goods, community resources, or informal supports for the child and family.

182.2(8) Flexible family support fund. The flexible family support fund is a department fund under which the department reimburses service providers for expenses incurred in purchasing tangible goods, community supports, or services approved by the department for a specific child or family and delivered to the child or family. The purpose of the fund is to provide goods and supports that have been identified by the department worker or through a family team meeting as critical to achieving the outcomes of the family's case permanency plan. Purchases on behalf of a child or family under the flexible family support fund:

a. Shall be designed to reduce the risk of child abuse or neglect;

b. Shall deal with a specific crisis situation or episode of need and shall not be delivered to meet ongoing or recurrent needs; and

c. Shall not involve the provision of direct cash assistance to the client.

441—182.3(234) Eligibility for services. To be eligible to receive family-centered services, children and families must meet the following requirements:

182.3(1) Case status. Family-centered services under this chapter are available to children and families, depending on their case status, as follows:

a. All family-centered services are available to children and their families when the department has opened a child welfare service case on the child subsequent to:

(1) An allegation of child abuse or neglect; or

(2) The child's adjudication as a child in need of assistance.

b. Supervision, family team meeting facilitation, relative home study, community resource procurement, and flexible

family support services are available to children and their families when:

(1) The department has initiated a child protective assessment on the child in response to an allegation of abuse or neglect; or

(2) A petition has been filed alleging the child to be a child in need of assistance, and a court order has been issued setting the date for an adjudication hearing or a prehearing conference.

c. Supervision and nonrehabilitative treatment services are available to children and their families when juvenile court services has opened a case on a youth because:

(1) The youth has been adjudicated delinquent; or

(2) The court has issued a consent decree.

d. Families and children who are receiving family-centered supervision or nonrehabilitative treatment services as of April 30, 2005, but who do not qualify under paragraph "a," "b," or "c" above may continue to receive services until June 30, 2005, or until their service authorization period has expired, whichever is earlier.

182.3(2) Need for service. The department has approved the child's and family's need for service in accordance with rule 441—182.4(234).

182.3(3) Income. Children may be eligible for service components of the family-centered services program without regard to income and at no cost to themselves when other eligibility requirements are met.

182.3(4) Limits on eligibility.

a. Children placed in a psychiatric medical institution for children are not eligible for family-centered services.

b. Children placed in either emergency shelter care or foster group care are not eligible for family-centered supervision services. The shelter care or group care setting is responsible for meeting the supervision needs of these children.

c. The amount and duration of services to children placed in emergency shelter care are limited as follows:

(1) Children in shelter care may receive a maximum of 20 service units of any combination of parental counseling and education or nonrehabilitative treatment therapy and counseling or skill development services for purposes of family reunification.

(2) The maximum length of time that parental counseling and education or nonrehabilitative treatment services may be provided to a child placed in shelter care is 30 days from the start date of these services, without regard to the length of the child's shelter care stay.

441—182.4(234) Approval and referral for services. The referral worker shall assess a child's eligibility for services in accordance with rule 441—182.3(234) and determine if services under the family-centered program are necessary to help achieve the goals and outcomes of the case permanency plan. Department case permanency plan development, provision of social casework, and activities for the delivery of family-centered services shall adhere to the provisions of rules 441—130.6(234), 441—130.7(234), and 441—Chapter 185, Divisions I and II. Except when a department worker is specified, the provisions of this rule also apply to a juvenile court officer who is the referral worker for a child who qualifies for supervision or nonrehabilitative treatment services.

182.4(1) Application for services. Application for family-centered services shall be made according to rule 441—130.2(234).

182.4(2) Service plan development. The department caseworker shall, whenever appropriate, use a family team

HUMAN SERVICES DEPARTMENT[441](cont'd)

meeting to design the most effective and responsive service plan for the child and family.

182.4(3) Supervisory approval.

a. Cases managed by department. Once the department worker has determined there is a need for family-centered services, the worker shall request supervisory approval of any services to be provided to the child or family.

b. Cases managed by juvenile court services. For nonrehabilitative treatment and supervision services when a juvenile court officer is the referral worker, the juvenile court officer shall request approval from the department supervisor designated by the service area manager to review such requests. In reviewing the request, the department shall consider information provided by juvenile court services on:

- (1) The assessed needs of the child;
- (2) The child's risk of placement in an out-of-home setting; and
- (3) The availability of services through other funding streams.

182.4(4) Referral. The referral worker shall assist the family in selecting an appropriate provider and shall notify the provider that family-centered services are approved.

a. The referral worker shall complete Form 470-3055, Referral of Client for Rehabilitative Treatment and Supportive Services, including any rehabilitative treatment services approved for the client and indicating:

(1) The amount (number of units) of services approved. For the flexible family support fund, the referral shall include sufficient detail to describe specific items and the maximum funding amounts that the provider is approved to purchase and obtain for the client under the fund.

(2) The duration of services approved. The duration of services approved shall not exceed six months, except for the flexible family support fund, which shall not extend beyond four consecutive months.

b. The referral worker shall forward a copy of Form 470-3055 to the provider, and a copy to the department when the referral worker is with juvenile court services, before services are provided to the child and family.

182.4(5) Case permanency plan. Approved family-centered services shall be specified in the case permanency plan for the child or family. Department case permanency plan development shall adhere to the provisions of rule 441—130.7(234).

a. The current department case permanency plan, if one is available at the time of referral, shall be transmitted to any provider to which the family is referred.

(1) Unless the need for immediate services dictates otherwise, the case permanency plan shall be submitted before the delivery of any services.

(2) For referrals to provide family team meeting facilitation services, a case permanency plan is not required at the time of referral. However, the department worker shall provide the facilitator with as much information about the family as possible.

b. When a case permanency plan is not available to the provider before initial service provision, the referral worker shall provide referral information orally, electronically, or in writing. The referral information shall:

(1) Include a description of the child's or family's needs, the goals for the service, and the services being requested.

(2) Be confirmed or amended through the transmission of a case permanency plan to the provider no later than 30 days after the date of the family's referral for services.

182.4(6) Review. The department worker shall review the need for family-centered services no less frequently than

every six months from the date of initial family-centered service provision.

441—182.5(234) Service provider qualifications. To be considered for service provision, all providers must have a contract with the department as specified in subrule 182.5(1). To obtain a contract, a provider must meet the requirements applicable to each service to be provided, as stated in subrules 182.5(2) through 182.5(6).

182.5(1) Contract. All providers shall have a current contract with the department that includes the specific service component to be purchased, as follows:

a. A contract for the delivery of the rehabilitative treatment and supportive services program pursuant to 441—Chapter 152. A provider with a contract for any rehabilitative treatment or supportive service shall amend that contract to include any family-centered service component the provider wishes to offer. A contract pursuant to 441—Chapter 152 is the only contracting method available to providers of the following family-centered service components:

- (1) Supervision.
- (2) Nonrehabilitative treatment.
- (3) Parental counseling and education.

b. A contract for the purchase of social services pursuant to 441—Chapter 150. Providers that have a purchase of social services contract and do not have a rehabilitative treatment and supportive service contract shall amend the purchase of social service contract to include any of the following service components that they wish to offer:

- (1) Family team meeting facilitation.
- (2) Relative home study.
- (3) Community resource procurement.
- (4) Flexible family support fund.

c. An individual service contract pursuant to 11—Chapters 106 and 107. The individual service contract is available only to individuals (or their employing entities) that do not have a contract pursuant to 441—Chapter 152 or 150 but wish to offer one or more of the following service components:

- (1) Family team meeting facilitation.
- (2) Relative home study.
- (3) Community resource procurement.
- (4) Flexible family support fund.

182.5(2) Supervision.

a. Persons providing supervision services to department clients shall meet the following minimum education and experience requirements:

(1) The person shall have two years of college coursework in a program with a social work concentration or shall have satisfactorily completed a relevant, concentrated, certified curriculum, such as a human services specialist program as offered in an Iowa area community college; or

(2) The person shall have the equivalent of two years of full-time work experience involving direct contact with people in overcoming their social, emotional, or behavioral problems. College coursework with an emphasis in the social or behavioral sciences, education, or child development may be substituted for the required experience, based on 30 semester hours being equivalent to one year.

b. Provider service management activities for department clients receiving supervision services shall be conducted by persons who meet or are under the direct supervision of persons who meet the minimum education and experience requirements for skill development services as specified in rule 441—185.10(234).

HUMAN SERVICES DEPARTMENT[441](cont'd)

182.5(3) Family team meeting facilitation. Providers delivering family team meeting facilitation services under this chapter shall:

- a. Have completed at least 18 hours of department-approved family team meeting facilitator training to meet department standards for approved facilitators;
- b. Be approved by the department as a family team meeting facilitator and be currently listed on the department-approved facilitator list; and
- c. Maintain written documentation that facilitator staff have fulfilled all necessary requirements to be department-approved facilitators.

182.5(4) Nonrehabilitative treatment and parental counseling and education.

a. Providers of nonrehabilitative treatment skill development services shall:

- (1) Meet the certification requirements in rule 441—185.10(234); and
- (2) Be certified pursuant to rule 441—185.11(234).

b. Persons delivering nonrehabilitative therapy and counseling or parental counseling and education shall meet the minimum education and experience requirements for therapy and counseling services as specified in rule 441—185.10(234).

c. Persons delivering nonrehabilitative treatment skill development services shall meet the minimum education and experience requirements specified in rule 441—185.10(234) for skill development services.

182.5(5) Relative home study. Providers delivering relative home study services shall:

- a. Either be employed by an agency licensed as a child-placing agency under 441—Chapter 108 or be a certified adoption investigator as defined in 441—Chapter 107; and
- b. Meet the educational and experience qualifications established for caseworkers in licensed child-placing agencies as specified in 441—subrule 108.4(3).

182.5(6) Community resource procurement. Persons delivering community resource procurement services shall have, at a minimum, a high school diploma or a high school equivalency diploma (GED).

441—182.6(234) Requirements for service delivery. All providers of family-centered services shall meet the referral requirements in subrule 182.6(1), the documentation requirements in rule 441—182.7(234), and the service delivery requirements specific to the particular service, as specified in subrules 182.6(4) through 182.6(9).

182.6(1) Referral. All providers of family-centered services shall:

- a. Receive written approval for these services from the referral worker on Form 470-3055, Referral of Client for Rehabilitative Treatment or Supportive Services, before providing services; and
- b. Receive approval from the referral worker before increasing the amount or duration of these services beyond what was previously authorized.

182.6(2) Service location. The department worker shall ensure that family-centered services are delivered in whatever locations are determined to be appropriate to ensure that reasonable efforts are being made to meet the child's and family's needs. The department worker shall consult with the family and providers throughout the period of service delivery to ensure that the service delivery locations are meeting needs.

182.6(3) Service management activities. Providers of supervision, nonrehabilitative treatment, or parental counseling and education components shall undertake nonbillable

activities to structure and facilitate the delivery of the service they are providing in response to the directions and goals of the case permanency plan. These activities shall include the following:

- a. Intake activities to collect information about the family necessary to begin service delivery.
- b. Assessment activities to review all available information on the family to identify the strengths and resources of the family and its individual members as well as obstacles impeding the family. Strengths, resources, and obstacles shall be analyzed with the family throughout the service delivery period to facilitate the service provider's response to the case permanency plan directions and goals.
- c. Planning activities to develop or revise a written service plan in collaboration with the family. The written service plan shall reflect the assessment findings and describe the service provider's implementation of the directions in the case permanency plan.
- d. Implementation activities to facilitate and deliver the services identified in the written service plan. These activities include documentation of service provision and the family's progress toward meeting the identified goals and objectives.
- e. Termination activities to review information with the family before the discontinuation of one or more services. These activities shall result in a written summary of service delivery and service outcome.

182.6(4) Supervision. Providers of family-centered supervision services shall:

- a. Provide supervision services to the child referred by the department worker or juvenile court officer.
- (1) Supervision services may be provided as the only service to a child or in combination with other department or community services.
- (2) In order for indirect behavioral monitoring contacts to be provided, indirect contacts must be included on Form 470-3055, Referral of Client for Rehabilitative Treatment and Supportive Services, and approved in the case permanency plan.
- (3) Service management activities as described in subrule 182.6(3) shall be provided as part of service delivery.

b. Maintain communication with the referral worker throughout the service delivery period. The provider shall promptly notify the referral worker of any protective or safety concerns about the child or family. Upon request, the provider shall submit to the referral worker a written summary of concerns based on observations about the child and family situation made during service delivery.

c. Document service delivery in the child's individual treatment record in accordance with the requirements of this subrule, 441—subrule 152.2(16), and rule 441—182.7(234).

182.6(5) Family team meeting facilitation. Providers of family team meeting facilitation services shall:

a. Deliver family team meeting facilitator services that meet the requirements as outlined in subrule 182.2(2). The provider shall ensure to the extent possible the continuity of facilitators for subsequent family team meetings involving the child and family.

b. Within seven calendar days from the delivery of facilitation services, provide the department referral worker with an electronic copy of information needed for applicable sections of the case permanency plan, as specified in Form 470-4126, Family Team Meeting Facilitation Notes. These sections shall include, at a minimum, the following:

- (1) The date and location of the meeting;
- (2) A list of persons attending the meeting;

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (3) Information identifying the family;
- (4) Information on family functioning areas;
- (5) Information and recommended goals and action steps on the family functioning domains of the home environment, parental capabilities, family interactions, family safety, and child well-being.

c. Maintain a copy of Form 470-4126, Family Team Meeting Facilitation Notes, and the date that these notes were provided to the department referral worker in the child's individual treatment record.

182.6(6) Nonrehabilitative treatment and parental counseling and education. Providers of family-centered nonrehabilitative treatment or parental counseling and education shall:

a. Develop a treatment plan in accordance with 441—subrules 185.10(4) and 185.10(5). For a child who is also receiving rehabilitative treatment services from the same provider, the treatment plan for nonrehabilitative treatment or parental counseling and education shall be combined with the rehabilitative treatment plan.

b. Deliver services that reflect the protective treatment needs of the child and the child's parents or adult family members, including intervention to treat abuse or neglect, prevent the placement of the child outside the family home, promote or maintain family reunification, or help achieve another planned permanent living arrangement for the child.

(1) Parental counseling and education shall be directed toward issues that help the parent or adult family members address the child's safety, permanency, and well-being needs more effectively.

(2) Nonrehabilitative treatment services shall be directed at the child to meet the child's safety, permanency, and well-being needs.

(3) The services provided shall include service management activities as described in subrule 182.6(3).

c. Document service delivery in the child's individual treatment record in accordance with the requirements of this subrule, 441—subrules 152.2(16) and 185.10(6), and rule 441—182.7(234). Service documentation in the child's individual treatment record shall specify which services delivered are nonrehabilitative treatment or parental counseling and education, as opposed to rehabilitative treatment therapy and skill development services.

182.6(7) Relative home study. Providers of relative home study services shall:

a. Complete a home study on families referred by the department. The home study shall address the areas specified in Form RC-0078, Relative Home Study Report Format. At a minimum, the home study shall:

(1) Be based on at least two face-to-face interviews with the family, one of which must occur in the family's residence.

(2) Include identifying information about all persons residing in the family home.

(3) Summarize sources of information, including family interviews and contacts with nonfamily members, used in preparing the home study.

(4) Contain information about the family background, developmental history, and the current functioning of family members.

(5) Address the welfare and adjustment of children currently residing in the home.

(6) Evaluate current relationships within the family.

(7) Evaluate family child-rearing practices and discipline techniques.

(8) Discuss the family's attitude toward and capacity to accept the child for placement.

(9) Assess the family's capacity to meet the needs of the child being considered for placement in the home.

(10) Include child abuse, criminal record, and sex offender registry checks made at the provider's expense on any person 14 years of age or older who resides in the family home.

(11) Include reference responses from at least three people concerning the character of the family.

(12) Include a summary and recommendations concerning the family's suitability as a placement resource for the child.

b. Complete a home study update if a home study was completed on a relative household within one year of the current referral. At a minimum, performing a home study update shall include:

(1) Holding one face-to-face interview with the family to review the information contained in the previous home study and determine if there have been any changes in the family's living situation that would affect the placement of the child. The interview shall take place in the family's residence.

(2) Completing child abuse, criminal record, and sex offender registry checks, at the provider's expense, on any new members of the household who are 14 years of age or older and any child in the household who has reached the age of 14 since the initial home study was completed.

(3) Preparing a summary that includes recommendations concerning the family's suitability as a placement resource for the child. The summary shall identify which areas specified in Form RC-0078, Relative Home Study Report Format, are unchanged and provide updated information on areas where changes have occurred.

c. As part of home study service activities, the provider shall:

(1) Discuss with the family early in the process the family's interest in pursuing foster care licensing; and

(2) Refer interested families to the department as soon as possible to begin the foster family study application and licensing process.

d. Prepare a written home study report or home study update as specified in Form RC-0078, Relative Home Study Format, and submit the report to the department worker within 45 calendar days from the date of the department's referral, unless the department worker has granted an extension to allow for completion of criminal record checks.

e. Maintain in the child's individual treatment record a copy of the completed home study report that was submitted to the department, along with notes and other supporting records to document the information included in the relative home study.

182.6(8) Community resource procurement. Providers of community resource procurement services shall:

a. Maintain telephonic, electronic, or in-person communication with the department referral worker as necessary during the period of service delivery to best coordinate the securing of necessary supports for children and families. Time spent maintaining this communication shall be billable service activity.

b. Maintain a record that supports billings submitted to the department. This record shall contain Form 470-3055, Referral of Client for Rehabilitative Treatment and Supportive Services, which authorized the service and shall identify:

(1) The name of the person who provided the service;

(2) The name of the client;

(3) The date and beginning and ending time of all billed service activity;

HUMAN SERVICES DEPARTMENT[441](cont'd)

(4) The type of activity (e.g., coordinating with referral worker, researching prices, obtaining bids if required, shopping for items);

(5) The type of contact (e.g., telephone, computer search, driving time, face-to-face); and

(6) The items sought or procured.

182.6(9) Flexible family support fund. Providers of flexible family support fund services shall:

a. Maintain communication with the department worker to clarify expectations and best coordinate purchases.

b. Obtain the best price and value possible for any supports or goods purchased for clients under the flexible family support fund and make purchases within the maximum amount approved by the department.

c. Provide to the department documentation, in a format prescribed by the department, of steps taken to obtain three cost bids on the purchase of any single item with a value of more than \$500.

d. Provide the department with original itemized receipts for purchases when submitting requests for reimbursement to the department.

e. Coordinate purchases made for clients under this program with delivery of community resource procurement services to the same clients.

f. Maintain documentation that supports all billings submitted to the department and that includes, at a minimum, copies of the invoices and receipts for all purchases.

441—182.7(234) Provider service record requirements.

182.7(1) Treatment plans. The provider shall develop a treatment plan for each child receiving services, except as specified below. The treatment plan shall comply with 441—subrules 185.10(4) and 185.10(5). Only one treatment plan is needed for all services the provider is contracted to provide on behalf of the child.

a. Provider treatment plans are not required for:

- (1) Family team meeting facilitation.
- (2) Relative home studies and updates.
- (3) Community resource procurement.
- (4) The flexible family support fund.

b. Provider treatment plans are not required for supervision if supervision is the only service the provider is delivering to the child or family. A treatment plan is required for supervision services when delivered in combination with other services for which a treatment plan is required.

182.7(2) Progress reports. For family-centered supervision, nonrehabilitative treatment, and parental counseling and education, providers shall complete progress reports that comply with 441—paragraph 185.10(6)“f.” Provider progress reports are not required for family team meeting facilitation, community resource procurement, relative home studies and updates, or the flexible family support fund.

182.7(3) Discharge summary. For family-centered supervision, nonrehabilitative treatment, and parental counseling and education, providers shall prepare a written report for the referral worker in accordance with 441—paragraph 185.10(6)“e” within 30 days of the termination of services. Discharge summaries are not required for family team meeting facilitation, community resource procurement, relative home studies, or the flexible family support fund.

182.7(4) Provider individual client case records. Providers shall maintain a confidential individual record for each individual or family receiving family-centered services for a period of five years after terminating services to the client. The record shall include the following:

a. The case permanency plan if supplied by the referral worker, or written documentation to the referral worker requesting a copy of the case permanency plan.

b. Form 470-3055, Referral of Client for Rehabilitative Treatment and Supportive Services, from the referral worker.

c. Any treatment plans, treatment plan reviews, progress reports, additional reports requested by the referral worker, and discharge summaries developed by the provider.

d. For family team meeting facilitation, a copy of Form 470-4126, Family Team Meeting Facilitation Notes, submitted to the department worker.

e. For relative home studies and updates, a copy of the completed home study report or home study update that was submitted to the department worker.

f. For the flexible family support fund, copies of receipts and invoices for purchases for which department reimbursement was requested.

g. For community resource procurement, the documentation described in paragraph 182.6(8)“b.”

h. For nonrehabilitative treatment, parental counseling and education, and supervision, documentation to substantiate each unit of service billed to the department. This documentation shall include:

- (1) A description of the specific service rendered;
- (2) Clear identification of the person or persons who rendered the service;
- (3) Identification of the person or persons who received the service;
- (4) The dates and amount of time service was rendered; and
- (5) The type of contact (face-to-face or by telephone).

i. Any correspondence with the referral worker regarding changes in services or requests for additional services.

441—182.8(234) Unit of service and service unit rates.

182.8(1) Billable units. All members of a family shall collectively be considered one recipient of any unit of family-centered services. The billable units of service for family-centered supportive service components shall be as follows:

a. For supervision:

(1) One-half hour of direct face-to-face contact between the service provider and the family or one or more of its members constitutes one unit of service.

(2) One-half hour of indirect monitoring through contacts by telephone with the child or a caretaking adult family member constitutes one unit of service. Indirect monitoring is billable only when specifically authorized by the referral worker.

(3) Monthly cumulative time for both direct and indirect services shall be totaled and rounded up or down to the nearest whole unit.

b. For family team meeting facilitation, a facilitated family team meeting including all premeeting preparation, meeting place arrangement, service management activities, meeting facilitation activities, postmeeting note preparation and timely submission of an acceptably completed Form 470-4126, Family Team Meeting Facilitation Notes, constitutes one unit of service.

c. For nonrehabilitative treatment:

(1) One-half hour of direct face-to-face contact between the service provider and the child or either or both of the parents or a caretaking adult family member constitutes one unit of service.

(2) Monthly cumulative time shall be totaled and rounded up or down to the nearest whole unit.

d. For parental counseling and education:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) One-half hour of direct face-to-face contact between the service provider and either or both of the parents or a caretaking adult family member constitutes one unit of service.

(2) Monthly cumulative time shall be totaled and rounded up or down to the nearest whole unit.

e. For relative home study services, a completed home study or home study update including all information gathering and report preparation activities, service management activities, reference checks, and the timely submission of an acceptably completed relative home study report constitutes one unit of service.

f. For community resource procurement:

(1) One-half hour of service activity on behalf of the child or child's family, either through direct contact with the family or through activities carried out in person or by telephone or electronic means, constitutes one unit of service.

(2) Monthly cumulative time shall be totaled and rounded up or down to the nearest whole unit.

182.8(2) Payment rates.

a. Unit rates for supervision and nonrehabilitative treatment services shall be established in accordance with 441—Chapter 185, Division VI. Unit rates for therapy and counseling and for skill development are the same whether the child's treatment need is rehabilitative or nonrehabilitative.

b. Unit rates for the following services shall be established in accordance with 441—subrule 185.112(14):

- (1) Family team meeting facilitation.
- (2) Parental counseling and education.
- (3) Relative home study services.
- (4) Community resource procurement.

c. For the flexible family support fund, no unit rate exists. Reimbursement is made to the provider based on the acceptably documented actual costs to the provider of making department-approved purchases of supports, flexible services, or goods for the benefit of a child or family.

182.8(3) Indirect costs. Expenses of transporting clients, service management activities, and other administrative functions shall be allowable indirect costs for nonrehabilitative treatment, parental counseling and education, community resource procurement, and supervision services, subject to the restrictions set forth in 441—Chapters 152 and 185. Such costs and activities are not directly billable costs or activities.

182.8(4) Group services. When more than one family receives services in a group setting, all members of each family participating in the group service activity are to be considered as one participant for billing purposes. Contracts shall specify a unit rate for group services separate from other services defined in the contract.

182.8(5) Team approach to service delivery. When two or more individuals from a service provider agency jointly deliver a unit of supervision services, billings for that unit of service shall be reimbursable in an amount equal to the cost of two or more units of service if the following criteria are met:

a. The case permanency plan requests a team approach to supervision service delivery and specifies the number of individuals who will be working together on the team, and the provider's contract identifies the service provider's ability to deliver such a team approach.

b. The specific number of provider staff requested in the case permanency plan are physically present to deliver services to the family, and these same individuals undertake the service management activities in relation to service provision.

441—182.9(234) Termination and adverse service actions. Services shall be denied, terminated, or reduced and appropriate notice given the client as specified in rule 441—130.5(234) unless otherwise provided for in this chapter. Services shall be terminated no later than the end of the service period approved by the department in Form 470-3055, Referral of Client for Rehabilitative Treatment and Supportive Services.

441—182.10(234) Appeals.

182.10(1) Decisions concerning family-centered services made by the department or its designee that adversely affect clients may be appealed pursuant to 441—Chapter 7.

182.10(2) Decisions made by the department that adversely affect service providers concerning services provided through a contract established pursuant to 441—Chapter 152 may be reviewed in accordance with rule 441—152.3(234).

182.10(3) Decisions made by the department that adversely affect service providers concerning services provided through a contract established pursuant to 441—Chapter 150 may be reviewed in accordance with 441—subrule 150.3(9).

182.10(4) Decisions made by the department that adversely affect service providers concerning services provided through a contract established pursuant to 11—Chapters 106 and 107 may be addressed through the provisions contained in that contract.

These rules are intended to implement Iowa Code section 234.6.

ITEM 10. Amend subparagraph **185.3(5)“a”(1)** as follows:

(1) Incorporating the service authorization into the *Form 470-3453, Case Permanency Plan, consisting of forms 427-1020, 427-1022, and 427-1023* if the service authorization is not subject to further court action, or *into* a reasonable facsimile containing the same information.

ITEM 11. Amend rule 441—185.112(234) as follows:

Amend the introductory paragraph as follows:

441—185.112(234) Determination of rates. Rules 441—185.102(234) to 441—185.107(234), 185.109(234) and 185.110(234) shall be held in abeyance for purposes of establishing rates effective January 1, 1998, unless otherwise provided for in these rules. Rates for a service to be effective on or after February 1, 1998, shall be established based on the payment rate negotiated between the provider and the department. This negotiated rate shall be based upon the historical and future reasonable and necessary cost of providing that service, other payment-related factors and availability of funding. Negotiated rates may be increased without negotiation if funds are appropriated for an across-the-board increase. A rate in effect as of December 31, 1997, shall continue in effect until a negotiated rate is established in accordance with the requirements of subrules 185.112(1) to 185.112(3), ~~subrule 185.112(6), or subrule 185.112(12), or 185.112(14),~~ or until the service is terminated in accordance with subrule 185.112(4).

Amend subrule 185.112(1), introductory paragraph, as follows:

185.112(1) Negotiation of rates. Rates for services to be made effective on or after February 1, 1998, must be established in accordance with this subrule except as provided for at subrule 185.112(12) *or* 185.112(14).

Adopt **new** subrule 185.112(14) as follows:

185.112(14) Establishment of statewide fixed rates. Rates for the following family-centered flexible supportive

HUMAN SERVICES DEPARTMENT[441](cont'd)

services shall be the same for all providers and are not subject to rate negotiation except as specifically provided for below.

a. Family team meeting facilitation.

(1) The rate for family team meeting facilitation may be negotiated as provided for in subrule 185.112(1).

(2) Notwithstanding the provisions of subrules 185.109(1) and 185.112(2), for the purpose of rate establishment, the weighted average rate for this service shall be \$200 per unit of service as defined in 441—subrules 182.2(2) and 182.8(1).

b. Parental counseling and education.

(1) The department will establish rates for parental counseling and education services for providers that have a contract for rehabilitative treatment and supportive services for individual family-centered therapy and counseling services in effect on April 30, 2005. These rates shall be effective May 1, 2005.

1. Rates for individual parental counseling and education shall be established at the average of:

- The lowest rate in effect for the provider for family-centered services individual therapy and counseling; and
- The lowest rate in effect for the provider for family-centered services individual skill development services.

2. Rates for group parental counseling and education shall be established at the average of:

- The lowest rate in effect for the provider for family-centered services group therapy and counseling; and
- The lowest rate in effect for the provider for family-centered services group skill development services.

(2) A provider that does not provide family-centered therapy and counseling but that has staff qualified pursuant to 441—subrule 182.5(4) may choose to establish a rate for parental counseling and education by:

1. Using the weighted average rates established in 185.109(1) for family-centered services individual therapy and counseling and family-centered services individual skill development to compute an average rate for individual parental counseling and education; and

2. Using the weighted average rates established in 185.109(1) for family-centered services group therapy and counseling and family-centered services group skill development to compute an average rate for group parental counseling and education.

(3) If a provider has not established or does not establish a rate for one or more of the four services used in computing the rates for parental counseling and education, the weighted average rate established pursuant to 185.109(1) for the missing service will be used in computing the rates.

(4) Providers that establish a contract for rehabilitative treatment and supportive family-centered therapy and counseling service on or after May 1, 2005, shall have rates for parental services established based on their negotiated rates for the services as described in subparagraph (1) or upon the weighted average rates for these services pursuant to subparagraph (3).

c. Relative home study (noncustodial parent home study, nonparental relative home study, and interstate compact home study).

(1) The rate for a new home study as described in 441—subrules 182.2(6) and 182.8(1) is \$700 per unit of service.

(2) The rate for an update of an existing home study as described in 441—subrules 182.2(6) and 182.8(1) is \$260 per unit of service.

d. Community resource procurement. The rate for community resource procurement services as described in 441—subrules 182.2(7) and 182.8(1) is \$10 per unit of service.

ITEM 12. Amend rule 441—185.121(234), introductory paragraph, as follows:

441—185.121(234) Billing procedures. At the end of each month, the provider agency shall prepare Form AA-2241-0 470-0020, Purchase of Service Provider Invoice, for contractual services provided by the agency during the month.

[Filed Emergency 4/15/05, effective 5/1/05]

[Published 5/11/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/11/05.

ARC 4137B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 235B.5(1), the Department of Human Services hereby amends Chapter 176, "Dependent Adult Abuse," Iowa Administrative Code.

These amendments clarify the reporting requirements for dependent adult abuse by:

- Defining "immediately" for the purpose of mandatory abuse reporting to mean "within 24 hours."
- Specifying that all mandatory reporters shall make a report of suspected abuse directly to the Department's Central Abuse Registry within 24 hours of their becoming aware of an abusive incident.

The amendments also make technical changes to update form numbers and references.

Confusion on reporting requirements has arisen following a statutory change made in 2004 Iowa Acts, chapter 1116, section 17, regarding the reporting procedure for mandatory reporters who are staff members or employees of health care facilities or other service providers. Previously, the statute required reporting "immediately" only to the reporter's supervisor. The supervisor had until the next business day to report the abuse to the Department. Now the reporter is required to report suspected abuse "immediately" both to the supervisor and to the Department.

Adopting a 24-hour mandatory reporting standard for dependent adult abuse is consistent with the statutory requirements in Iowa Code section 232.70 for the reporting of child abuse. A 24-hour standard allows facility staff members and employees some time to consider whether they have a reasonable belief that the dependent adult has been abused or whether the incident has some other origin, such as in the case of lost or misplaced property.

These amendments do not provide for waivers in specified situations because the requirement for immediate reporting is set in statute.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on March 2, 2005, as **ARC 4014B**. The Department received one comment in favor of the amendments. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on April 13, 2005.

The Department finds that these amendments confer a benefit on reporters by clarifying their legal responsibilities. Therefore, the Department finds that the normal effective date of these amendments should be waived and has filed

HUMAN SERVICES DEPARTMENT[441](cont'd)

these amendments pursuant to Iowa Code section 17A.5(2)“b”(2).

These amendments are intended to implement Iowa Code section 235B.3.

These amendments became effective on May 1, 2005.

The following amendments are adopted.

ITEM 1. Amend rule **441—176.1(235B)** by adopting the following **new** definition of “immediately” in alphabetical order:

“Immediately” means within 24 hours when referring to mandatory reporters reporting suspected abuse of a dependent adult.

ITEM 2. Amend rule 441—176.4(235B) as follows:

441—176.4(235B) Reporters. The central registry and county offices shall accept reports from mandatory reporters or any other person who believes dependent adult abuse has occurred.

176.4(1) Mandatory reporters shall:

a. *Report suspected abuse of a dependent adult within 24 hours of becoming aware of an abusive incident.*

b. ~~make~~ Make a written report within 48 hours after an oral report.

176.4(2) The reporter may use the department’s Form 470-2441, Suspected Dependent Adult Abuse ~~Reporting Form Report~~, or may use a form developed by the reporter that meets the requirements of Iowa Code section ~~232-70~~ 235B.3.

ITEM 3. Amend subrule 176.16(3) as follows:

176.16(3) Billing procedures. Claims for payment shall be submitted to the division of ~~adult, children behavioral, developmental, and family protective services~~ on Form ~~07-350~~ GAX, ~~Purchase Order/Payment Voucher General Accounting Expenditure~~, accompanied by a letter from department staff certifying that the necessary conditions for payment have been met.

[Filed Emergency After Notice 4/15/05, effective 5/1/05]

[Published 5/11/05]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/11/05.

ARC 4136B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 234.6 and 600.22, the Department of Human Services amends Chapter 201, “Subsidized Adoptions,” Iowa Administrative Code.

These amendments rescind paragraphs that specify the treatment of certain income and resources of adoptive families. The adoption subsidy program in Iowa is funded in part through the Foster Care and Adoption Assistance Program under Title IV-E of the Social Security Act. Federal guidance

for the IV-E program has clarified that the totality of a family’s circumstances should be considered in determining the subsidy for an eligible child, but the specific amount shall be determined through negotiation with the family, not through application of an arbitrary “means test.” The one definite limit is that the amount of subsidy shall not be more than the amount that would have been paid if the child were still in foster care.

The amendments also make a technical change to update the chapter implementation clause and a form reference.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on March 2, 2005, as **ARC 4015B**. The Department received no comments on the Notice of Intended Action.

The Department has added a technical change to paragraph 201.3(2)“b” to reflect a change in the form required by the Iowa Department of Revenue to file a claim for state reimbursement of nonrecurring expenses.

The Council on Human Services adopted these amendments on April 13, 2005.

The Department finds that these amendments confer a benefit on applicants for adoption assistance by allowing more flexibility in negotiation of the subsidy amount commensurate to the family’s situation, and benefit the state of Iowa by preserving the state’s ability to receive federal matching funds through the federal Title IV-E Foster Care and Adoption Assistance Program. Therefore, the Department finds that the normal effective date of these amendments should be waived and has filed these amendments pursuant to Iowa Code section 17A.5(2)“b”(2).

These amendments are intended to implement Iowa Code subsection 234.6(4) and sections 600.17 through 600.23.

These amendments became effective May 1, 2005.

The following amendments are adopted.

ITEM 1. Amend subrule **201.3(2)**, paragraph “b,” as follows:

b. The child from another country who meets the criteria in subrule 201.3(1) and whose adoption is finalized after June 14, 1989, must file an application on Form 470-0744, Application for Adoption Subsidy, and complete Form 470-0749, Adoption Subsidy Agreement, ~~prior to before~~ or at the time of a final decree of adoption. The claim for reimbursement must be filed on Form ~~07-350 GAX, Purchase Order/Payment Voucher General Accounting Expenditure~~, within two years of the date of the adoption decree and must include receipts.

ITEM 2. Amend subrule **201.5(2)** by rescinding and reserving paragraphs “a” and “b.”

ITEM 3. Amend **441—Chapter 201**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 600.17 to 600.21 and 600.23, and 2003 Iowa Acts, House File 667, section 29, subsection 5.

[Filed Emergency After Notice 4/15/05, effective 5/1/05]

[Published 5/11/05]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/11/05.

ARC 4166B

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 1, "Administration," and Chapter 20, "Dental Assistants," Iowa Administrative Code.

These amendments authorize a registered dental assistant to provide intraoral suctioning under the general supervision of a dentist. These amendments will facilitate sealant programs, especially in public health programs.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 2, 2005, as **ARC 3976B**. A public hearing on the amendment was held on February 22, 2005. Two written comments in support of the amendments were received. Oral comments were also received from the Iowa Dental Association expressing concern about the amendments.

These amendments were approved at the April 15, 2005, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 147, 153, and 272C.

These amendments will become effective on June 15, 2005.

The following amendments are adopted.

ITEM 1. Amend rule **650—1.1(153)**, definition of "general supervision of a dental assistant," as follows:

"General supervision of a dental assistant" means that a dentist has delegated the ~~extraoral~~ services to be provided by a dental assistant, *which are limited to all extraoral duties and intraoral suctioning*. The dentist need not be present in the facility while these ~~extraoral~~ services are being provided.

ITEM 2. Amend subrule 20.4(2) as follows:

20.4(2) Registered dental assistant. A registered dental assistant may perform under general supervision all extraoral duties ~~in the dental office or dental clinic and intraoral suctioning~~ that are assigned by the dentist that are consistent with these rules. During intraoral procedures, the registered dental assistant may, under direct supervision, assist the dentist in performing duties assigned by the dentist that are consistent with these rules. The registered dental assistant may take radiographs if qualified pursuant to 650—Chapter 22.

[Filed 4/22/05, effective 6/15/05]

[Published 5/11/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/11/05.

ARC 4165B

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 10, "General Requirements," Chapter 30, "Discipline," and Chapter 31, "Complaints and Investigations," Iowa Administrative Code.

These amendments specify requirements related to the obligation of all licensees and registrants to make mandatory reports of any acts or omissions that could constitute a basis for disciplinary action when committed by another person regulated by the Board, as required by Iowa Code section 272C.9. Board rules define a reportable act or omission as any conduct that may constitute a basis for disciplinary action under the rules or statutory provisions governing the practice of dentistry, dental hygiene, or dental assisting in Iowa. Grounds for disciplinary action include violating any provision of Iowa law.

The amendments also require licensees and registrants to make mandatory reports of acts or omissions, within 30 days. However, in the event that the reportable act or omission poses an immediate threat to patient safety, the report must be filed within 24 hours from the date the licensee or registrant acquires knowledge of the reportable act or omission.

These amendments are not subject to waiver pursuant to rule 650—30.4(147,153,272C).

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 2, 2005, as **ARC 3973B**. A public hearing on these amendments was held on February 22, 2005. Written comments on the amendments were received from the Iowa Dental Association (IDA). The IDA asserted that the proposed amendments exceed the Board's statutory authority in two areas. First, the IDA argues that the Iowa Code imposes no mandatory reporting duty on registrants, only licensees. However, Iowa Code section 272C.1(5) states that the term "licensing" also includes the derivations of "registration" and "certification." Therefore, the Board is within its statutory authority to require both licensees and registrants to make mandatory reports.

Second, the IDA argues that the amendments are beyond the statutory authority granted to the Board and that the Board only has the authority to require the reporting of acts or omissions that can result in the revocation or suspension of a license. However, Board rules establish that violating any of the grounds for discipline could result in the suspension or revocation of a license or registration. Moreover, Iowa Code sections 272C.9(2), 272C.4(6), and 272C.3(2) grant the Board the authority to adopt rules that define reportable acts or omissions. The Board's rules implement this legislative intent and give licensees and registrants clear standards on what must be reported. These amendments are identical to those published under Notice.

These amendments were approved at the April 15, 2005, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 17A, 147, 153, and 272C.

These amendments will become effective on June 15, 2005.

The following amendments are adopted.

ITEM 1. Amend subrule 10.6(4) as follows:

10.6(4) Reporting acts or omissions. In accordance with 650—31.13(272C), each licensee or registrant shall be responsible for reporting to the board, ~~within seven days~~, any acts or omissions that could result in the ~~suspension or revocation discipline~~ of a ~~licensee~~ or ~~registration registrant~~ when committed by another person licensed or registered to practice dentistry, dental hygiene, or dental assisting.

ITEM 2. Amend rule **650—30.4(147,153,272C)**, numbered paragraph "**24**," introductory paragraph and first unnumbered paragraph, as follows:

24. Failure to report any of the following:

DENTAL EXAMINERS BOARD[650](cont'd)

Any acts or omissions which could result in the ~~suspension or revocation~~ discipline of a ~~licensee~~ licensee or ~~registrant~~ registrant when committed by a person licensed or registered to practice dentistry, dental hygiene, or dental assisting.

ITEM 3. Amend subrule **31.13(2)**, paragraph “a,” and subrule 31.13(3) as follows:

a. The report shall be filed with the board within seven 30 days from the date the licensee or registrant acquires knowledge of the reportable act or omission. *However, in the event such reportable act or omission poses an immediate threat to patient safety, the report shall be filed within 24 hours from the date the licensee or registrant acquires knowledge of the reportable act or omission.*

31.13(3) Failure to report. Failure to report knowledge of a reportable act or omission within the required seven-day time period shall constitute a basis for the initiation of a board disciplinary action against the licensee or registrant who failed to report.

ITEM 4. Rescind and reserve rule **650—31.14(272C)**.

[Filed 4/22/05, effective 6/15/05]

[Published 5/11/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/11/05.

ARC 4167B**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 13, “Special Licenses,” and Chapter 15, “Fees,” Iowa Administrative Code.

These amendments allow the Board to issue a temporary permit authorizing the permit holder to practice dentistry or dental hygiene on a short-term basis in Iowa at a specific location or locations to provide volunteer services. The amendments specify eligibility requirements and limitations of the permit.

A temporary permit to provide volunteer services is limited to applicants who practice in a free or nonprofit dental clinic. In addition, the applicant must not receive compensation directly or indirectly for providing dental services. The application fee is \$25 for a temporary permit to provide volunteer services.

These amendments do not authorize the issuance of temporary permits to dental assistants because dental assistants are eligible to apply for dental assistant trainee status to work in Iowa on a temporary basis to provide volunteer services.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7. However, application fees are not subject to waiver pursuant to rule 650—15.9(17A,147,153,272C).

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 2, 2005, as **ARC 3975B**. A public hearing on these amendments was held on February 22, 2005. One written comment from the Iowa Dental Association (IDA) was received. The IDA requested that the Board eliminate the fee for a temporary permit for volunteer services or consider a form of reciprocity with a state that has no fee for Iowa dentists who volunteer in that state. However, the Board is required by statute to collect licensing fees,

and fees are not subject to waiver pursuant to 650—15.9(17A,147,153,272C). The Board set a reduced fee of \$25 for a temporary permit for volunteer services, compared to the \$100 fee for other temporary permits. These amendments are identical to those published under Notice of Intended Action.

These amendments were approved at the April 15, 2005, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code section 153.19.

These amendments will become effective on June 15, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [13.3, 15.1(16), 15.1(17)] is being omitted. These amendments are identical to those published under Notice as **ARC 3975B**, IAB 2/2/05.

[Filed 4/22/05, effective 6/15/05]

[Published 5/11/05]

[For replacement pages for IAC, see IAC Supplement 5/11/05.]

ARC 4143B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby adopts amendments to Chapter 2, “Agency Procedure for Rule Making,” Iowa Administrative Code.

These amendments are intended to implement Iowa Code section 25B.6 and the language in the uniform rules on petitions for rule making.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 16, 2005, as **ARC 3983B**. A public hearing was held March 8, 2005. No written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 25B.6.

These amendments will become effective June 15, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [2.7(1), 2.18] is being omitted. These amendments are identical to those published under Notice as **ARC 3983B**, IAB 2/16/05.

[Filed 4/20/05, effective 6/15/05]

[Published 5/11/05]

[For replacement pages for IAC, see IAC Supplement 5/11/05.]

ARC 4142B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts amendments to Chapter 96, "Local Options Sales and Services Tax for School Infrastructure," Iowa Administrative Code.

These amendments implement 2003 Iowa Acts, chapter 157 [Iowa Code chapter 423E], as passed by the Eightieth General Assembly. The amendments establish standards for the certificate of need required of school districts to expend funds received from the supplemental school infrastructure amount.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 16, 2005, as **ARC 3978B**. Public hearings were held March 9, 2005, and March 16, 2005, and three written comments were received. These amendments contain the following nonsubstantive changes to those published under Notice of Intended Action.

1. The definition of "statewide tax revenues per student" was changed to read as follows:

"'Statewide tax revenues per student' means the amount per student established by Iowa Code subsection 423E.4(3)'b'(3)."

2. The word "grants" was changed to "certificates of need" in the introductory paragraph of subrule 96.5(1). A similar change was made to subrule 96.7(4) in which the word "grant" was changed to "certificate of need."

3. The word "innovative" was deleted from paragraph 96.5(3)"h," which now reads as follows:

"h. Description of collaboration with one or more other public or private entities."

The State Board of Education adopted these amendments April 14, 2005.

These amendments are intended to implement 2003 Iowa Acts, chapter 157 [Iowa Code chapter 423E].

These amendments will become effective June 15, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [96.1, 96.4 to 96.7, Ch 96 impl.] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3978B**, IAB 2/16/05.

[Filed 4/20/05, effective 6/15/05]

[Published 5/11/05]

[For replacement pages for IAC, see IAC Supplement 5/11/05.]

ARC 4161B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 459.103, the Environmental Protection Commission hereby adopts amendments to Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

The amendments modify requirements for construction permits and the duration for which construction permits are effective. Requirements for proper use of the Master Matrix are clarified, and language is modified to more clearly describe determination of groundwater table location.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 13, 2004, as **ARC 3735B**. Written and oral comments were received by the Department. As a result of the written and oral comments, the following significant changes have been made to the Notice of Intended Action:

1. In subparagraph 65.7(1)"b"(1), the permit requirement for an egg washwater storage structure was deleted; that requirement is set forth in renumbered subparagraph 65.7(1)"b"(5). Language regarding animal unit capacity was deleted; similar language was also deleted in 65.7(1)"b"(5) and 65.7(1)"b"(7)"1."

2. In subparagraphs 65.7(1)"b"(3) and (4), language was added which states that a new construction permit is not required if the increase in the volume of manure is due to an increase in animal capacity, animal weight capacity or animal unit capacity that does not exceed the limits specified in a previously issued construction permit.

3. In subparagraph 65.7(1)"b"(6), language was added which states that a new construction permit is not required if the increase in the volume of egg washwater is due to an increase in animal capacity, animal weight capacity or animal unit capacity that does not exceed the limits specified in a previously issued construction permit.

4. In subparagraph 65.7(1)"b"(7), the word "reopening" was changed to "repopulating."

5. The language in subparagraph 65.7(1)"b"(9) was removed from the list of circumstances under which a construction permit must be obtained, but it is retained as an unnumbered paragraph for clarification. Also, the word "improvements" was changed to "additions."

6. In subrule 65.7(5), the three-year permit period for completion of construction for new permits was changed to four years. The word "or" was changed to "and" to clarify that both initiation and completion of construction must take place within the specified periods to avoid expiration of the permit, and language was added to provide that an extension of time may be granted for completion of construction as well as for initiation of construction. Language was also added to indicate that the requirement for completion of construction takes effect on the effective date of these amendments and that previously issued permits will expire on June 15, 2012, if construction is not completed by June 14, 2012.

7. In subparagraph 65.10(3)"b"(3), language indicating that a board of supervisors is required to submit a recommendation to approve or deny an application was deleted.

8. In 65.15(7)"c"(1)"2," the words "runoff control basin" were changed to "settled open feedlot effluent basin" to coincide with the definition in Iowa Code section 459.102.

These amendments are intended to implement Iowa Code section 459.103.

These amendments shall become effective June 15, 2005. The following amendments are adopted.

ITEM 1. Amend rule **567—65.1(455B)** as follows:

Rescind the definition of "commercial manure applicator."

Adopt the following new definition of "seasonal high water table" in alphabetical order:

"Seasonal high water table" means the part of the soil profile closest to the soil surface that becomes saturated (usually

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

in the spring) as observed in a monitoring well or determined by recognition of soil redoxomorphic features.

NOTE: "Redoxomorphic features" refers to the gleying or mottling or both that occur under saturated conditions within the soil profile.

ITEM 2. Amend subrule **65.7(1)**, paragraph "**b**," as follows:

b. Except as provided in subrule 65.7(2), a confinement feeding operation beginning construction, installation or modifications after March 20, 1996, shall obtain a construction permit prior to beginning construction, installation of an animal feeding operation structure used in that operation or prior to beginning significant modifications in the volume or manner in which the manure is stored or reopening the operation if it was discontinued for 24 months or more if any of the following conditions exist:

(1) The confinement feeding operation uses an aerobic structure, anaerobic lagoon or earthen manure storage basin. Constructing or modifying any unformed manure storage structure, or constructing or modifying a confinement building that uses an unformed manure storage structure.

(2) The confinement feeding operation uses a formed manure storage structure and has an animal weight capacity of 625,000 pounds or more for animals other than bovine or 1,600,000 pounds or more for bovine. Constructing, installing or modifying a confinement building or a formed manure storage structure at a confinement feeding operation if, after construction, installation or expansion, the animal unit capacity of the operation is 1,000 animal units or more. This subparagraph also applies to confinement feeding operations that store manure exclusively in a dry form.

(3) The confinement feeding operation structure provides for the storage of manure exclusively in a dry form and has an animal weight capacity of 1,250,000 pounds or more for animals other than bovine or 4,000,000 pounds or more for bovine. Initiating a change that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in any unformed manure storage structure, even if no construction or physical alteration is necessary. Increases in the volume of manure due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

(4) Initiating a change, even if no construction or physical alteration is necessary, that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in a formed manure storage structure if, after the change, the animal unit capacity of the operation is 1,000 animal units or more. Increases in the volume of manure due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

(4) (5) Constructing or modifying any egg washwater storage structure or a confinement building at a The confinement feeding operation uses that includes an egg washwater storage structure.

(6) Initiating a change that would result in an increase in the volume of egg washwater or a modification in the manner in which egg washwater is stored, even if no construction or physical alteration is necessary. Increases in the volume of egg washwater due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

(5) (7) The confinement feeding operation contains more than one species and the sum of the total animal weight capacity for each species divided by the permit threshold for that species is greater than 1.0(100%). Repopulating a confinement feeding operation if it was closed for 24 months or more and if any of the following apply:

1. The confinement feeding operation uses an unformed manure storage structure or egg washwater storage structure;

2. The confinement feeding operation includes only confinement buildings and formed manure storage structures and has an animal unit capacity of 1,000 animal units or more.

(8) Installing a permanent manure transfer piping system, unless the department determines that a construction permit is not required.

(6) The confinement feeding operation is proposed for an increase in animal weight capacity which would otherwise require a construction permit, even though no physical changes or construction is necessary. Repairs to a confinement building or additions such as fans, slats, gates, roofs, or covers do not require a construction permit. In some instances, the department may determine that a construction permit is not required to increase the volume of manure or egg washwater or a modification in the manner in which manure or egg washwater is stored if the increase or modification is deemed insignificant. Plans for repairs or modifications to a manure storage structure shall be submitted to the department to determine if a permit is required.

ITEM 3. Amend subrule 65.7(5) as follows:

65.7(5) Expiration of construction permits. The A construction permit issued prior to June 15, 2005, shall expire if construction, as defined in rule 65.8(455B), is not begun within one year of the date of issuance and shall expire on June 15, 2012, if construction is not completed by June 14, 2012. A construction permit issued on or after June 15, 2005, shall expire if construction, as defined in rule 65.8(455B), is not begun within one year and completed within four years of the date of issuance. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director, unless a person who has an interest in the proposed operation is the subject of a pending enforcement action, or a person who has a controlling interest in the proposed operation has been classified as a habitual violator.

ITEM 4. Amend subrule **65.9(1)** by adopting the following new paragraph "**p**":

p. A copy of any master matrix evaluation provided to the county.

ITEM 5. Amend paragraph **65.10(3)"b"** by adopting the following new subparagraph (3):

(3) The board shall not use the master matrix to evaluate a construction permit application for the construction or expansion of a confinement feeding operation structure if the construction is for expansion of a confinement feeding operation structure constructed prior to April 1, 2002, and, after the expansion of the confinement feeding operation, its animal unit capacity is 1,666 animal units or less. The board may still submit comments regarding the application.

ITEM 6. Amend paragraph **65.15(7)"c"** as follows:

c. Determination of groundwater table. For purposes of this rule, groundwater table means the average annual is the seasonal high water table determined by a licensed profes-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

sional engineer, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or Natural Resources Conservation Service (NRCS). If, and where a construction permit is required, approved by the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured using at least one of the following for either formed or unformed structures:

1. *Temporary monitoring wells.* Each of the three temporary monitoring wells by measuring the water level seven days after installation shall be developed according to 567—subrule 110.11(8). The top of the well screen shall be within 5 feet of the ground surface. Each well shall be extended to at least 2 feet below the bottom of the liner of an unformed manure storage structure, or to at least 2 feet below the footings of a formed manure storage structure.

- *Unformed structures.* For an unformed manure storage structure, each monitoring well may be installed in the existing boreholes resulting from the The corings required in subrule 65.15(6) may be completed as temporary monitoring wells for this purpose.

- *Formed structures.* For a formed manure storage structure, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure, with one of the wells close to the corner of deepest excavation. If the formed structure is circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

2. *Test pits.* The department may allow use of test pits in lieu of temporary monitoring wells if seasonal variation in climatic patterns, soil and geologic conditions prevent accurate determination of the seasonal high water table or prior to the construction of an unformed manure storage structure liner to ensure that the required separation distance to the groundwater table is being met. Test pits will be configured 3 feet x 4 feet x 4 feet, or equivalent volume, and the bottom of each pit shall be 2 feet below the floor of the proposed anaerobic lagoon, earthen manure storage basin, earthen aerobic structure or settled open feedlot effluent basin. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or NRCS qualified staff for the determination of soil characteristics and related groundwater influence. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. One test pit shall be located in each corner and one in the center of the proposed manure control structure, unless otherwise specified by the department. A description of the materials present in the test pit shall be documented by all of the following:

- Digital photos;
- Description of soils including mottling;
- Construction specifications; and
- Weather conditions both prior to and during the period in which test pits are open.

(2) The seasonal high water table shall be determined by measuring the groundwater level in the temporary monitoring wells not earlier than seven days following installation and shall include consideration of NRCS soil survey information, soil characteristics The monitoring well measurements, along with evaluation of site soils for indicative features such as color and mottling, other existing water table data, and other pertinent information shall be used to determine the average annual high water table. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.15(7)“b,” the level to which the groundwater table will be

lowered will be considered to represent the average annual seasonal high water table.

[Filed 4/22/05, effective 6/15/05]

[Published 5/11/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/11/05.

ARC 4162B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 459.103, the Environmental Protection Commission hereby adopts an amendment to Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

Notice of Intended Action was published in the November 10, 2004, Iowa Administrative Bulletin as **ARC 3807B**. As a result of comments received, the Commission proposed an Amended Notice of Intended Action which was published in the Iowa Administrative Bulletin on February 16, 2005, as **ARC 4004B**. The amendment modifies paragraph 65.17(13)“e” regarding record-keeping requirements for commercial fertilizer applications on fields that received manure. Written comments were received by the Department; however, as a result of the written comments, no changes have been made to the Amended Notice of Intended Action.

This amendment is intended to implement Iowa Code section 459.312.

This amendment shall become effective June 15, 2005.

The following amendment is adopted.

Amend paragraph **65.17(13)“e”** as follows:

e. Effective August 25, 2005, date(s) and application rate(s) of commercial nitrogen and phosphorus on fields that received manure. However, if the date and application rate information is for fields which are not owned for crop production or which are not rented or leased for crop production by the person required to keep records pursuant to this subrule, an enforcement action for noncompliance with a manure management plan or the requirements of this subrule shall not be pursued against the person required to keep records pursuant to this subrule or against any other person who relied on the date and application rate in records required to be kept pursuant to this subrule, unless that person knew or should have known that nitrogen or phosphorus would be applied in excess of maximum levels set forth in paragraph 65.17(1)“a.” If manure is applied to fields not owned, rented or leased for crop production by the person required to keep records pursuant to this subrule, that person shall obtain from the person who owns, rents or leases those fields a statement specifying the planned commercial nitrogen and phosphorus fertilizer rates to be applied to each field receiving the manure.

[Filed 4/22/05, effective 6/15/05]

[Published 5/11/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/11/05.

ARC 4139B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6(7), the Department of Human Services amends Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

These amendments increase two of the deductions from household income used in determining Food Assistance eligibility and benefits. In anticipation of an increase in heating costs, the Department requested an analysis of Iowa Food Assistance utility allowances. The consultant has recommended the following increases:

- An increase in the standard utility allowance for households that are responsible for heating and cooling expenses of \$5 per month, from \$271 to \$276. This increase is based on estimated energy, water, and sewer bills for each Iowa county, weighted by the county's percentage of the total statewide population with income below 125 percent of the federal poverty level. The analysis estimates that an allowance of \$276 will cover the utility expenses of 80 percent of low-income Iowa households.
- An increase in the standard telephone allowance of \$16 per month, from \$20 to \$36. This increase is based on the average monthly household expenditures on local telephone services (excluding long-distance services) cited in a statistical report published by the Federal Communications Commission in May 2004. Current federal line charges, interstate access charges, universal service charges, and average 911, disability access, and state and federal taxes cited in the report total \$17 per month, without considering any charge for local services.

These amendments are expected to increase Food Assistance benefits by an average of \$8 per month for 25,000 Iowa households. Food Assistance benefits are completely federally funded.

These amendments do not provide for waivers in specified situations because they benefit the households affected. Federal law does not allow the Department to waive limits on deductions used in the Food Assistance program.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on February 2, 2005, as **ARC 3968B**. Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 3966B** on the same date to solicit public comment. The Department received no comments on the Notice of Intended Action. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted these amendments on April 13, 2005.

These amendments are intended to implement Iowa Code section 234.6(7).

These amendments shall become effective on June 15, 2005, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [65.8(1)"a" and "b," 65.8(3)] is being omitted. These amendments are identical to those published

under Notice as **ARC 3966B** and Adopted and Filed Emergency as **ARC 3968B**, IAB 2/2/05.

[Filed 4/15/05, effective 6/15/05]
[Published 5/11/05]

[For replacement pages for IAC, see IAC Supplement 5/11/05.]

ARC 4152B**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 522B.18, the Insurance Division hereby amends Chapter 10, "Licensing of Insurance Producers," Iowa Administrative Code.

These amendments update Chapter 10 to clarify a change in the process for insurance producers who apply for the property and casualty lines of authority. An applicant who holds a personal lines authority and wishes to become licensed for all lines of property and casualty insurance must still complete an examination which covers the commercial line authority. After successful completion of the commercial lines examination, a producer will be issued a license for the property and casualty lines of authority. In the past, such a license was issued with the personal and commercial lines of authority. This prior practice differs from other states and has created difficulties for insurance producers seeking non-resident licenses in those other states.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on March 2, 2005, as **ARC 4023B**. No comments were received. These adopted amendments are identical to the amendments published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 522B.

These amendments shall become effective June 15, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [10.4(6), 10.7(1), 10.7(2)] is being omitted. These amendments are identical to those published under Notice as **ARC 4023B**, IAB 3/2/05.

[Filed 4/21/05, effective 6/15/05]
[Published 5/11/05]

[For replacement pages for IAC, see IAC Supplement 5/11/05.]

ARC 4154B**RACING AND GAMING
COMMISSION[491]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby adopts amendments to Chapter 6, "Occupational and Vendor Licensing," Chapter 9, "Harness Racing," and Chapter 10, "Thoroughbred and Quarter Horse Racing," Iowa Administrative Code.

RACING AND GAMING COMMISSION[491](cont'd)

Items 1 through 4 are amended for clarification.

Item 5 allows the Commission to license a jockey under the age of 18 who has the written consent of a parent or guardian.

Item 6 allows the Commission to license a driver under the age of 18 who has the written consent of a parent or guardian to drive in qualifying races only.

Item 7 makes a placing judge an official for harness racing.

Item 8 clarifies the sex allowance provisions related to thoroughbred racing.

These amendments were published under Notice of Intended Action in the February 16, 2005, Iowa Administrative Bulletin as **ARC 3986B**. A public hearing was held on March 8, 2005. No comments were received. These amendments are identical to those published under Notice.

These amendments will become effective June 15, 2005.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [6.16(5), 6.17(1), 6.19(1), 6.20(1), 6.23(1)"a," 6.25, 9.4(1), 10.4(5)"g"] is being omitted. These amendments are identical to those published under Notice as **ARC 3986B**, IAB 2/16/05.

[Filed 4/21/05, effective 6/15/05]

[Published 5/11/05]

[For replacement pages for IAC, see IAC Supplement 5/11/05.]

ARC 4155B**REAL ESTATE APPRAISER
EXAMINING BOARD[193F]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 543D.5, the Real Estate Appraiser Examining Board hereby amends Chapter 3, "Examination," Chapter 4, "Associate Real Property Appraiser," Chapter 5, "Certified Residential Real Property Appraiser," and Chapter 6, "Certified General Real Property Appraiser"; rescinds Chapter 9, "Renewal, Expiration and Reinstatement of Certificates or Registrations," and adopts a new Chapter 9, "Renewal, Expiration and Reinstatement of Certificates and Registrations, and Inactive Status"; amends Chapter 11, "Continuing Education," and Chapter 12, "Fees"; and adopts a new Chapter 13, "Certified Residential Appraiser Education Requirements," Chapter 14, "Certified General Appraiser Education Requirements," and Chapter 15, "Supervisor Responsibilities," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 16, 2005, as **ARC 4063B**. The Board received one comment on the proposed new rules and, after clarification, the issue was resolved. An amendment to rule 12.1(543D) and to subrule 9.5(6) has been made since the Notice of Intended Action to clarify and further subdivide the biennial registration fees for inactive status licensees. The fee to reinstate an inactive license to active status was reduced from \$100 to \$50. Rule 193F—12.1(543D) now reads as follows:

193F—12.1(543D) Required fees. The following fee schedule applies to certified general, certified residential and associate appraisers.

Initial examination application fee	\$ 100
Examination fee (and reexamination fee)	\$ 95
Biennial registration fee for active status:	
Certified general real property appraiser	\$ 260
Certified residential real property appraiser	\$ 260
Associate real property appraiser	\$ 150
Biennial registration fee for inactive status:	
Certified general real property appraiser	\$ 100
Certified residential real property appraiser	\$ 100
Associate real property appraiser	\$ 50
Reciprocal application fee (one-time only)	\$ 50
Reciprocal registration fee (biennial)	\$ 260
Fee to reinstate a lapsed license	\$ 150
Fee to reinstate an inactive license	
to active status	\$ 50
Reissuance or replacement of a lost, destroyed	
or stolen certificate or registration	\$ 50
Work product review fee	\$ 300

The Board voted to adopt these amendments with the outlined changes by conference call on April 20, 2005. A conference call was held in lieu of a meeting in order to save the expense of a Board meeting and for the convenience of Board members dealing with time constraints.

These amendments are intended to implement Iowa Code chapters 543D and 272C.

These amendments shall become effective June 15, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amend Chs 3 to 6, 11 and 12; adopt Chs 9, 13 to 15] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4063B**, IAB 3/16/05.

[Filed 4/22/05, effective 6/15/05]

[Published 5/11/05]

[For replacement pages for IAC, see IAC Supplement 5/11/05.]

ARC 4131B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on April 12, 2005, adopted an amendment to Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the February 16, 2005, Iowa Administrative Bulletin as **ARC 3991B**.

The Code of Federal Regulations was updated in October 2004, and the Department needs to cite the current version in these rules. No changes to the federal regulations have occurred.

This amendment is identical to the one published under Notice of Intended Action.

TRANSPORTATION DEPARTMENT[761](cont'd)

This amendment is intended to implement Iowa Code chapter 327B.

This amendment will become effective June 15, 2005.

Rule-making action:

Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, 2003 2004, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

[Filed 4/15/05, effective 6/15/05]

[Published 5/11/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/11/05.

ARC 4156B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 17A.5, 476.1, and 476.2, the Utilities Board (Board) gives notice that on April 22, 2005, the Board issued an order in Docket No. RMU-05-5, In re: Amendments to Lifeline and Link-Up Rules [199 IAC 39.3(4) and (5)], "Order Adopting Amendments." The Board is adopting the amendments to its Lifeline

and Link-Up rules to comply with eligibility criteria established by the Federal Communications Commission (FCC). On August 27, 2004, the Board issued an "Order Adopting Emergency Rule" that adopted the new eligibility criteria established by the FCC. The emergency rule was published in IAB Vol. XXVII, No. 6 (9/15/04) p. 418, as **ARC 3666B**. The amendments adopted in this order are to incorporate additional requirements established by the FCC.

Notice of Intended Action for these amendments was published in IAB Vol. XXVII, No. 18 (3/2/05) p. 1186, as **ARC 4028B**. The Rural Iowa Independent Telephone Association (RIITA) and Qwest Corporation (Qwest) filed statements of position with comments. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a statement of position supporting the amendments. RIITA suggested some clarification to the amendments while Qwest recommended the proposed amendments not be adopted and provided amendments consistent with its position.

The Board has reviewed the written comments and is adopting the amendments with revisions. The Board's order provides a detailed analysis of the amendments and the comments received. It is available on the Board's Web site at www.state.ia.us/iub or on paper from the Board's Records Center at 350 Maple Street, Des Moines, Iowa 50319-0069.

These amendments are intended to implement Iowa Code sections 476.1, 476.2, and 17A.4, and the Telecommunications Act of 1996, 47 U.S.C. § 214 and 254.

These amendments shall become effective June 15, 2005.

The following amendments are adopted.

ITEM 1. Amend subrule 39.3(4) as follows:

39.3(4) Application Certification. The application certification of eligibility for Lifeline or Link-Up rate assistance shall be upon a form as set forth below. The form shall be supplied to the applicant by the eligible carrier.

LINK-UP AND LIFELINE RATE ASSISTANCE APPLICATION CERTIFICATION

Name _____ SSN _____

Address _____

Soc. Sec. _____

City _____ State _____ Zip _____

Phone Number where you may be reached or receive messages (____) _____

Please answer the following questions (indicate by check mark):

1. By filling out this application I (the applicant) request:

____ Low-income telephone connection assistance (Link-Up) and/or

____ Low-income telephone Lifeline assistance.

2. Have you received Link-Up assistance at the above address in the past?

____ Yes

____ No

If the answer is "yes," you are not eligible for Link-Up assistance.

3. Are you participating in any of the following programs?

____ Medicaid (e.g., Title XIX/Medical, State Supplemental Assistance)

____ Food Stamps

____ Supplemental Security Income

____ Federal Public Housing Assistance Section 8

____ Low-Income Home Energy Assistance

____ Temporary Assistance to Needy Families program

____ National School Lunch Program's free lunch program

4. Is your income at or below 135 percent of the Federal Poverty Guidelines?

____ Yes

____ No

UTILITIES DIVISION[199](cont'd)

I understand completion of this application does not constitute immediate acceptance into these programs. I agree to notify the telecommunications carrier if I cease to participate in any of the public assistance programs I checked above or if my income becomes greater than 135 percent of the Federal Poverty Guidelines.

I certify under penalty of perjury the above information is true. I have read the information on this application and understand I must meet the above qualifications to receive assistance from these programs.

SIGNATURE _____ DATE _____

ITEM 2. Amend subrule 39.3(5) as follows:

39.3(5) Data collection. Eligible carriers shall keep records of the number of subscribers receiving Link-Up and Lifeline assistance. Each eligible carrier must keep accurate records of the revenues it forgoes in providing Lifeline and Link-Up. The board requires that the carrier file information with the federal administrator demonstrating the carrier's Lifeline and Link-Up plans meet the federal criteria, *indicating* the number of qualifying low-income consumers, and stating there are no state contributions.

In addition, eligible carriers shall mail each year to Lifeline and Link-Up subscribers the verification form set out below (or another form that requests the same information), in a sample size consistent with the formulas and table set forth in Appendix J of In the Matter of Lifeline and Link-Up, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, Release No. 04-87, 199 FCC Rcd 8302 (April 29, 2004). Subscribers who receive the verification form should be selected at random. Eligible carriers shall then verify on their annual report that they have performed the required verification.

LINK-UP AND LIFELINE RATE ASSISTANCE VERIFICATION

Failure to return this verification within 30 days may cause you to no longer be eligible for this subsidy.

Name _____ SSN _____

Address _____

City _____ State _____ Zip _____

I am currently receiving low-income monthly telephone bill assistance (Lifeline) at the following:

Phone Number: _____

Address: _____

I am currently participating in the following program(s):

_____ Medicaid (e.g., Title XIX/Medical, State Supplemental Assistance);

_____ Food Stamps;

_____ Supplemental Security Income;

_____ Federal Public Housing Assistance Section 8;

_____ Low-Income Home Energy Assistance;

_____ Temporary Assistance to Needy Families program;

_____ National School Lunch Program's free lunch program; or

_____ My income is at or below 135 percent of the Federal Poverty Guidelines.

I agree to notify the telecommunications carrier if I cease to participate in any of the public assistance programs I checked above or if my income becomes greater than 135 percent of the Federal Poverty Guidelines.

I certify under penalty of perjury the above information is true. I have read the information on this application and understand I must meet the above qualifications to receive assistance from these programs.

SIGNATURE _____ DATE _____

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/11/05.

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